

THIRTY-FIRST DAY (Continued)—WEDNESDAY, MARCH 3, 1971

The House met at 9:00 a.m. and was called to order by the Speaker.

The roll of the House was called and the following Members were present:

Mr. Speaker	Doran	Jungmichel	Price
Adams	Doyle	Kaster	Reed
Agnich	Dramberger	Kost	Rodriguez
Allen, Joe	Earthman	Kubiak	Rosson
Allen, John	Farenthold	Lee	Salem
Angly	Finck	Lemmon	Salter
Atwell	Finnell	Lewis	Sanchez
Atwood	Finney	Ligarde	Schulle
Baker	Floyd	Lombardino	Semos
Bass, T.	Foreman	Longoria	Shannon
Beckham	Gammage	Lovell	Sherman
Bigham	Garcia	McAlister	Short
Blanton	Grant	McKissack	Silber
Blythe	Graves	Mengden	Simmons
Bowers	Hale	Moncrief	Slider
Braecklein	Hanna, Joe	Moore, A.	Smith
Braun	Hannah, John	Moore, G.	Solomon
Burgess	Harding	Moore, T.	Spurlock
Bynum	Harris	Moreno	Stewart
Caldwell	Hawkins	Murray	Swanson
Calhoun	Hawn	Nabers	Tarbox
Carrillo	Haynes	Nelms	Traeger
Cates	Head	Neugent, D.	Truan
Cavness	Heatly	Nichols	Tupper
Christian	Hendricks	Niland	Uher
Clark	Hilliard	Nugent, J.	Vale
Clayton	Holmes, T.	Ogg	Von Dohlen
Cobb	Holmes, Z.	Orr	Ward
Cole	Howard	Parker, C.	Wayne
Craddick	Hubenak	Parker, W.	Wieting
Cruz	Hull	Patterson	Williams
Daniel	Ingram	Pickens	Williamson
Davis, D.	Jones, D.	Poerner	Wolff
Davis, H.	Jones, E.	Poff	Wyatt
Denton	Jones, G.	Presnal	

Absent

Allred	Golman	Kilpatrick	Santiesteban
Bass, B.	Johnson	Newton	Slack

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

A quorum of the House was announced present.

The Invocation was offered by Father Elbert Harris, St. Peter Claver Catholic Church, Houston, Texas, as follows:

"Almighty and Provident Father, we bow our heads in acknowledgement of Your sovereignty and majesty. We praise You for Your glory and for manifesting it towards us.

We are grateful to You for all that You are and are towards us. We thank You for this great State, this Legislature, this Session, this day. We thank You for having endowed this Body with the ability, the wisdom and the vision to enable them to attend to the affairs and concerns of other mortals whom they represent here.

May they realize that this is a sacred trust, in their exercise of it they must account to you and to their fellowman. Free them from all defects of mind and body so that they may enact laws resting on the principles of truth, justice, freedom, and responsibility. Protect them against all fear, prejudice, and self-seeking. Inspire them with solid virtue—with endurance to accomplish their task, with courage to undertake it, with genuine concern for the needs and aspirations of all Your citizens.

Pardon them for the offenses they might commit against You and their fellowman through ill temper, duplicity, and deceit.

Reward them with a sense of honesty and justifiable, satisfiable satisfaction at the end of this day for having behaved well in Your sight and in the sight of man. Amen."

LEAVES OF ABSENCE GRANTED

The following Members were granted leaves of absence for today on account of official business:

Mr. Boyle on motion of Mr. Calhoun.

Mr. Coats on motion of Mr. Calhoun.

On motion of Mr. Tom Bass, Mr. Stroud was granted leave of absence for today on account of illness.

MESSAGE FROM THE SENATE

Austin, Texas, March 3, 1971

Honorable Gus Mutscher, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has passed the following:

SB 89, By Schwartz: Relating to the term of office of supervisors of the Bayview Municipal Utility District of Galveston County, Texas; and declaring an emergency.

SB 333, By Wilson: Authorizing governing boards of public junior colleges originally created as county junior college districts which contain territory in three (3) or more counties to divide such junior college districts into nine (9) separate election districts and provide election of one trustee from each district by qualified voters of district; and declaring an emergency.

SCR 39, By Word: Recognizing and paying tribute to Disabled Veterans Organization upon its Fiftieth Anniversary.

SCR 40, By Herring: In memory of John D. Cofer.

Respectfully,
CHARLES A. SCHNABEL
Secretary of the Senate

CONGRATULATORY RESOLUTIONS ADOPTED

The following Congratulatory Resolutions were adopted unanimously:

HSR 176, by Garcia: Commending The Texas A&I University Javelinas Football Team.

HSR 177, by Garcia: Commending Coach Gil Steinke of Texas A&I University.

On motion of Mr. Truan, the names of all the Members of the House were added to the above resolutions as signers thereof.

(Mr. Murray in the Chair)

INTRODUCTION OF GUESTS AND PRESENTATION TO SPEAKER MUTSCHER

The Chair recognized the Honorable J. A. Garcia, Jr., who addressed the House and introduced the following guests who were present and seated on the Speaker's Rostrum:

Mr. Fred Scott, father of Edward Scott, outstanding football player for the Texas A&I University Javelinas Football Team who was seriously injured last year.

Coach Gil Steinke of Texas A&I University who was elected "NAIA Coach of the Year for 1970" and will be inducted into the National Hall of Fame of NAIA.

Mr. Karl Douglas and Mr. Jim Brown, Captains of the Javelinas Football Team of Texas A&I University.

Mr. Garcia then presented Mr. Jim Brown who presented to Speaker G. F. (Gus) Mutscher a framed memento of the Texas A&I University Javelinas' two consecutive wins of the NAIA National Championship.

(Speaker in the Chair)

Representatives Kilpatrick, Bill Bass, and Santiesteban entered the House and were announced present.

HB 448 ON SECOND READING

The Speaker laid before the House, as a Special Order, on its second reading and passage to engrossment,

HB 448, A bill to be entitled An Act relating to tuition fees and tuition scholarships at state-supported institutions of higher education; amending

Subsections (a) and (b), Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes); repealing Subsection (c), Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes); repealing Article 2653, Revised Civil Statutes of Texas, 1925; providing for severability; and declaring an emergency.

The bill was read second time.

Representatives Golman and Slack entered the House and were announced present.

HB 448—(Consideration continued)

Mr. Doran offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend HB 448 by striking all below the enacting clause and inserting in lieu thereof the following:

Section 1. Subsections (a) and (b), Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes), are amended to read as follows:

“(a) The governing boards of the several institutions of collegiate rank supported in whole or in part by public funds appropriated from the Treasury of the State of Texas shall collect from students registering in those schools and shall reserve in a separate account on the books of the respective institutions the following tuition or registration fees:

Item No.	Type of Student	Rate
“1. Resident student registered as an undergraduate\$	9 per semester credit hour
“2. Nonresident student registered as an undergraduate\$	47 per semester credit hour
“3. Resident student registered as a graduate student in a graduate school other than a medical, dental or law student\$	9 per semester credit hour

Item No.	Type of Student	Rate
"4. Nonresident student registered as a graduate student in a graduate school other than a medical, dental or law student		\$ 47 per semester credit hour
"5. Resident student registered in a medical school as a medical student		\$ 500 per academic year
"6. Nonresident student registered in a medical school as a medical student		\$1500 per academic year
"7. Resident student registered in a dental school as a dental student		\$ 500 per academic year
"8. Nonresident student registered in a dental school as a dental student		\$1500 per academic year
"9. Student registered in a school of nursing as a nursing student.....		\$ 50 per semester and per 12-week summer session
"10. A student registered in a school of nursing as a nursing student for less than twelve (12) semester credit hours of work or for less than a full semester credit hour or term hour load during a summer session shall pay an amount proportionately less than the amount provided in subdivision 9 of this section, but not less than		\$ 20
"11. Resident or nonresident students registered for courses in art, architecture, drama, education, radio-TV, speech, language training, music, or any other course in which individual coaching or specialized instruction is provided during the course of instruction, shall pay, in addition to the regular tuition fee, a fee designated by the governing board of the institution; but in no event shall the additional fee be more per semester of four and one-half (4½) months, or per summer session, than		\$ 75
"12. Resident student registered in a school of law		\$ 9 per semester credit hour
"13. Nonresident student registered in a school of law		\$ 47 per semester credit hour

Provided, however, that the governing board of each senior college and university shall collect from each Texas resident student a minimum tuition fee of \$60 per semester except in those cases where said governing board determines that such fee would create an undue hardship on a part-time student, in which case the governing board may set a lesser amount than \$60 to be charged as such minimum tuition fee for a part-time student. The

governing board of each institution shall collect a minimum of \$400 per semester from each student who is not a resident of the State of Texas.

"14. The tuition fee for a public junior college shall be at the discretion of the local governing board, but such fee for residents of Texas who reside within the junior college district shall not exceed 60 percent of the tuition fee charged residents of Texas enrolled in public senior colleges and universities. The tuition fee for residents of Texas who do not reside within the junior college district shall not be less than 60 percent of the tuition fee charged residents of Texas enrolled in public senior colleges and universities. The tuition charged for nonresident students of Texas enrolled in a public junior college shall not be less than the tuition fee charged nonresident students of Texas enrolled in public senior colleges and universities in Texas.

"(b) The governing boards of the state-supported institutions of higher education shall reserve in a separate account on the books of the respective institutions, out of the fees levied and collected from students under Subsection (a) of this section, an amount determined by the Legislature in the General Appropriations Act for each institution to create a special fund to be used in awarding tuition scholarships to needy resident students enrolled in the respective institutions. Tuition scholarships shall be awarded to students with the approval of the president or administrative head of each respective institution and in accordance with the rules and regulations governing the award of tuition scholarships that the governing boards of the respective institutions may promulgate. Rules and regulations promulgated by the governing boards are subject to the following conditions:

"(1) A student's eligibility is based primarily on financial need as evidenced by the inability of his parents to finance his education and by the student's efforts to finance his education through part-time employment or loans from private sources.

"(2) Awards shall be based on character and satisfactory scholastic record.

"(3) Only a student classified as a resident under the provisions of this Act is eligible to receive a tuition scholarship.

"(4) Tuition scholarships shall be awarded in amounts determined by the governing boards of the respective institutions. The amounts of the awards shall be credited to students as partial or full payment of their tuition fees. A student otherwise entitled to a refund shall receive the refund based only on that portion of the tuition actually paid by the student.

"(5) No later than thirty (30) days after the close of the fiscal year, each institution shall transfer any unused balances in the fund set up for scholarship awards to the tuition income account from which the scholarship fund was established."

Sec. 2. Subsection (c), Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes), and Article 2653, Revised Civil Statutes of Texas, 1925, are repealed.

Sec. 3. This Act shall be effective at the beginning of the school period nearest September 1, 1971.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Representative Johnson entered the House and was announced present.

HB 448—(Consideration continued)

Mr. Grant Jones offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 448 by striking the period at the end of Line 58, Page 2, (Second Printing), Item 14 of Section I (a) and adding the following:

“; provided, however, that:

(i). The Board of Trustees of Public Junior Colleges in Texas are authorized to exempt from payment of tuition all students who are residents of the Junior College District enrolled in twelve (12) or more semester credit hours, provided that such action will allow them to participate and benefit by funds available as provided by Title I, P.L. 874, Acts of the 81st Congress, as amended by P.L. 89-10, Acts of the 89th Congress.

(ii). Such action by the Board of Trustees shall not affect their authority under nor shall this amendment in any way supersede the provisions of Sec. 51.103, Subchapter F, Chapter 889, Acts of the 61st Legislature, Regular Session, 1969.

(iii). All other provisions of this Act shall be applicable in every respect insofar as determining resident requirements for students.”

The above amendment offered to Committee Amendment No. 1 was adopted without objection.

VOTE RECORDED

Mr. Kubiak requested to be recorded as voting Nay on the adoption of the amendment by Mr. Grant Jones to Committee Amendment No. 1 to HB 448.

Representative Allred entered the House and was announced present.

HB 448—(Consideration continued)

Mr. Clayton offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 448 by striking the figure "9" where it appears on page 1 at line 35 and on page 2 at lines 3 and 37 all on the second printing of said bill and substitute therefor the figure "8".

Mr. Grant Jones moved to table the above amendment offered by Mr. Clayton.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—112

Adams	Daniel	Ingram	Poerner
Agnich	Davis, D.	Johnson	Presnal
Allen, Joe	Denton	Jones, E.	Price
Allred	Doran	Jones, G.	Rodriguez
Angly	Doyle	Jungmichel	Rosson
Atwell	Dramberger	Kaster	Salem
Atwood	Earthman	Kubiak	Salter
Bass, B.	Farenthold	Lee	Sanchez
Bass, T.	Finck	Lemmon	Santiesteban
Beckham	Finney	Lewis	Schulle
Bigham	Floyd	Ligarde	Semos
Blanton	Gammage	Lombardino	Shannon
Blythe	Garcia	Lovell	Sherman
Bowers	Grant	McAlister	Silber
Braecklein	Graves	McKissack	Simmons
Braun	Hale	Mengden	Smith
Burgess	Hannah, John	Moncrief	Solomon
Bynum	Harding	Moore, G.	Stewart
Caldwell	Harris	Moore, T.	Swanson
Calhoun	Hawkins	Nabers	Truan
Carrillo	Hawn	Nelms	Tupper
Cates	Head	Nichols	Uher
Cavness	Hendricks	Niland	Vale
Christian	Hilliard	Nugent, J.	Von Dohlen
Clark	Holmes, Z.	Ogg	Ward
Cobb	Howard	Orr	Wieting
Cole	Hubenak	Parker, C.	Williams
Cruz	Hull	Parker, W.	Wyatt

Nays—31

Allen, John	Craddick	Foreman	Haynes
Baker	Davis, H.	Golman	Heatly
Clayton	Finnell	Hanna, Joe	Holmes, T.

Jones, D.	Murray	Short	Traeger
Kilpatrick	Neugent, D.	Slack	Wayne
Kost	Pickens	Slider	Williamson
Longoria	Poff	Spurlock	Wolff
Moore, A.	Reed	Tarbox	

Present—Not Voting

Moreno

Absent

Newton Patterson

Absent-Excused

Boyle Coats Stroud

Mr. Uher offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 448 by striking the figure "9" where it appears on page 1 at line 35 and on page 2 at lines 3 and 37 all on the second printing of said bill and substitute therefor the figure "7".

Mr. Cole offered the following substitute amendment for the amendment offered by Mr. Uher:

Amend HB 448, Second Printing by striking all below the enacting clause and substituting in lieu therefor the following:

Section 1. Subsections (a) and (b), Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes), are amended to read as follows:

"(a) The governing boards of the several institutions of collegiate rank supported in whole or in part by public funds appropriated from the Treasury of the State of Texas shall collect from students registering in those schools, and shall reserve in a separate account on the books of the respective institutions the following tuition or registration fees:

Item No.	Type of Student	Rate
"1.	Resident student registered as an under-graduate	\$ 5 per semester credit hour
"2.	Nonresident student registered as an undergraduate	\$35 per semester credit hour
"3.	Resident student registered as a graduate student in a graduate school other than a medical, dental or law student	\$5 per semester credit hour

Item No.	Type of Student	Rate
"4.	Nonresident student registered as a graduate student in a graduate school other than a medical, dental or law student	\$35 per semester credit hour
"5.	Resident student registered in a medical school as a medical student	\$ 500 per academic year
"6.	Nonresident student registered in a medical school as a medical student	\$1500 per academic year
"7.	Resident student registered in a dental school as a dental student	\$ 500 per academic year
"8.	Nonresident student registered in a dental school as a dental student	\$1500 per academic year
"9.	Student registered in a school of nursing as a nursing student	\$ 50 per semester and per 12-week summer session
"10.	A student registered in a school of nursing as a nursing student for less than twelve (12) semester credit hours of work or for less than a full semester credit hour or term hour load during a summer session shall pay an amount proportionately less than the amount provided in Subdivision 9 of this section, but not less than	\$ 20
"11.	Resident or nonresident students registered for courses in art, architecture, drama, education, radio-TV, speech, language training, music, or any other course in which individual coaching or specialized instruction is provided during the course of instruction, shall pay, in addition to the regular tuition fee, a fee designated by the governing board of the institution; but in no event shall the additional fee be more per semester of four and one-half (4½) months, or per summer session, than	\$ 75
"12.	Resident student registered in a school of law	\$ 5 per semester credit hour
"13.	Nonresident student registered in a school of law	\$ 35 per semester credit hour

Provided, however, that the governing board of each senior college and university shall collect from each Texas resident student a minimum tuition fee of \$60 per semester except in those cases where said governing board determines that such fee would create an undue hardship on a part-time

student, in which case the governing board may set a lesser amount than \$60 to be charged as such minimum tuition fee for a part-time student. The governing board of each institution shall collect a minimum of \$400 per semester from each student who is not a resident of the State of Texas.

"14. The tuition fee for a public junior college shall be at the discretion of the local governing board, but such fee for residents of Texas who reside within the junior college district shall not exceed 60 percent of the tuition fee charged residents of Texas enrolled in public senior colleges and universities. The tuition fee for residents of Texas who do not reside within the junior college district shall not be less than 60 percent of the tuition fee charged residents of Texas enrolled in public senior colleges and universities. The tuition charged for nonresident students of Texas enrolled in a public junior college shall not be less than the tuition fee charged nonresident students of Texas enrolled in public senior colleges and universities in Texas.

"(b) The governing boards of the state-supported institutions of higher education shall reserve, in a separate account on the books of the respective institutions, out of the fees levied and collected from students under Subsection (a), of this Section, an amount determined by the Legislature in the General Appropriations Act for each institution to create a special fund to be used in awarding tuition scholarships to needy resident students enrolled in the respective institutions. Tuition scholarships shall be awarded to students with the approval of the president or administrative head of each respective institution and in accordance with the rules and regulations governing the award of tuition scholarships that the governing boards of the respective institutions may promulgate. Rules and regulations promulgated by the governing boards are subject to the following conditions:

"(1) A student's eligibility is based primarily on financial need as evidenced by the inability of his parents to finance his education and by the student's efforts to finance his education through parttime employment or loans from private sources.

"(2) Awards shall be based on character and satisfactory scholastic record.

"(3) Only a student classified as a resident under the provisions of this Act is eligible to receive a tuition scholarship.

"(4) Tuition scholarships shall be awarded in amounts determined by the governing boards of the respective institutions. The amounts of the awards shall be credited to students as partial or full payment of their tuition fees. A student otherwise entitled to a refund shall receive the refund based only on that portion of the tuition actually paid by the student.

"(5) No later than thirty (30) days after the close of the fiscal year, each institution shall transfer any unused balances in the fund set up for scholarship awards to the tuition income account from which the scholarship fund was established."

Sec. 2. Subsection (c), Section, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil

Statutes), and Article 2653, Revised Civil Statutes of Texas, 1925, are repealed.

Sec. 3. This Act shall be effective at the beginning of the school period nearest September 1, 1971.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provision or applications of the Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Mr. Uher moved to table the above substitute amendment offered by Mr. Cole.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—96

Adams	Finnell	Jungmichel	Salter
Agnich	Finney	Kost	Sanchez
Allen, John	Floyd	Lee	Santiesteban
Angly	Foreman	Lemmon	Schulle
Atwell	Garcia	Lewis	Semos
Baker	Golman	Lombardino	Shannon
Beckham	Hale	Longoria	Sherman
Blanton	Hanna, Joe	McAlister	Short
Bowers	Harding	McKissack	Simmons
Braecklein	Hawkins	Mengden	Slack
Burgess	Hawn	Moncrief	Slider
Bynum	Head	Moore, A.	Solomon
Calhoun	Heatly	Moore, G.	Spurlock
Cavness	Hendricks	Nabers	Swanson
Christian	Hilliard	Neugent, D.	Tarbox
Clayton	Holmes, T.	Niland	Traeger
Cobb	Howard	Nugent, J.	Uher
Cruz	Hubenak	Ogg	Von Dohlen
Davis, D.	Hull	Pickens	Ward
Davis, H.	Ingram	Poerner	Wayne
Doran	Johnson	Poff	Wieting
Doyle	Jones, D.	Presnal	Williamson
Dramberger	Jones, E.	Rosson	Wolff
Earthman	Jones, G.	Salem	Wyatt

Nays—47

Allen, Joe	Atwood	Bass, T.	Blythe
Allred	Bass, B.	Bigham	Braun

Caldwell	Gammage	Lovell	Reed
Carrillo	Grant	Moore, T.	Rodriguez
Cates	Hannah, John	Moreno	Silber
Clark	Harris	Nelms	Smith
Cole	Haynes	Nichols	Stewart
Craddick	Holmes, Z.	Orr	Truan
Daniel	Kaster	Parker, C.	Tupper
Denton	Kilpatrick	Parker, W.	Vale
Farenthold	Kubiak	Patterson	Williams
Finck	Ligarde	Price	

Absent

Graves	Murray	Newton
--------	--------	--------

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

Mr. Tom Moore and Mr. Graves offered the following substitute amendment for the Uher amendment:

Amend Committee Amendment No. 1 to HB 448.

Sec. 1 (a) by changing item Numbers 1 and 3 to read as \$50.00 a semester.

Mr. Uher moved to table the above substitute amendment offered by Mr. Tom Moore.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—98

Adams	Doran	Hull	Niland
Agnich	Doyle	Ingram	Nugent, J.
Allen, John	Dramberger	Johnson	Ogg
Angly	Earthman	Jones, D.	Orr
Atwell	Finnell	Jones, E.	Parker, W.
Baker	Finney	Jones, G.	Patterson
Blanton	Floyd	Jungmichel	Pickens
Bowers	Garcia	Kaster	Poerner
Braecklein	Golman	Kost	Poff
Burgess	Grant	Lee	Presnal
Bynum	Hale	Lemmon	Price
Calhoun	Hanna, Joe	Lewis	Rosson
Cates	Harding	Lombardino	Salter
Cavness	Hawn	McAlister	Sanchez
Christian	Head	McKissack	Schulle
Clayton	Heatly	Mengden	Semos
Cobb	Hendricks	Moncrief	Shannon
Cole	Hilliard	Moore, A.	Sherman
Daniel	Holmes, T.	Moore, G.	Short
Davis, D.	Howard	Murray	Slack
Davis, H.	Hubenak	Nabers	Slider

Smith	Tarbox	Ward	Wolff
Solomon	Traeger	Wayne	Wyatt
Spurlock	Uher	Wieting	
Swanson	Von Dohlen	Williamson	

Nays—45

Allen, Joe	Craddick	Kubiak	Salem
Allred	Cruz	Ligarde	Santiesteban
Atwood	Denton	Longoria	Silber
Bass, B.	Farenthold	Lovell	Simmons
Bass, T.	Finck	Moore, T.	Stewart
Beckham	Foreman	Moreno	Truan
Bigham	Gammage	Nelms	Tupper
Blythe	Hannah, John	Neugent, D.	Vale
Braun	Harris	Nichols	Williams
Caldwell	Haynes	Parker, C.	
Carrillo	Holmes, Z.	Reed	
Clark	Kilpatrick	Rodriguez	

Absent

Graves	Hawkins	Newton
--------	---------	--------

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

Mr. Cole offered the following substitute amendment for the Uher amendment:

Amend Committee Amendment No. 1 to HB 448 by striking the figure "9" where it appears on page 1 at line 35 and on page 2 at lines 3 and 37 all on the second printing of said bill and substitute therefor the figure "5".

Mr. Uher moved to table the above substitute amendment offered by Mr. Cole.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—83

Agnich	Cavness	Hawkins	Jungmichel
Allen, John	Christian	Hawn	Kost
Atwell	Clayton	Head	Lee
Baker	Cobb	Heatly	Lemmon
Beckham	Davis, D.	Hilliard	Lewis
Blanton	Doyle	Holmes, T.	Lombardino
Bowers	Earthman	Howard	McAlister
Braecklein	Finnell	Hubenak	McKissack
Burgess	Finney	Hull	Mengden
Bynum	Floyd	Ingram	Moncrief
Calhoun	Golman	Jones, D.	Moore, A.
Carrillo	Hanna, Joe	Jones, E.	Moore, G.
Cates	Harding	Jones, G.	Nabers

Niland	Salter	Slider	Von Dohlen
Ogg	Santiesteban	Smith	Ward
Parker, W.	Schulle	Solomon	Wayne
Pickens	Semos	Spurlock	Wieting
Poerner	Shannon	Swanson	Williamson
Poff	Sherman	Tarbox	Wolff
Presnal	Short	Traeger	Wyatt
Rosson	Slack	Uher	

Nays—61

Adams	Davis, H.	Johnson	Patterson
Allen, Joe	Denton	Kaster	Price
Allred	Doran	Kilpatrick	Reed
Angly	Dramberger	Kubiak	Rodriguez
Atwood	Farenthold	Ligarde	Salem
Bass, B.	Finck	Longoria	Sanchez
Bass, T.	Foreman	Lovell	Silber
Bigham	Gammage	Moore, T.	Simmons
Blythe	Garcia	Moreno	Stewart
Braun	Grant	Murray	Truan
Caldwell	Hale	Nelms	Tupper
Clark	Hannah, John	Neugent, D.	Vale
Cole	Harris	Nichols	Williams
Craddick	Haynes	Nugent, J.	
Cruz	Hendricks	Orr	
Daniel	Holmes, Z.	Parker, C.	

Absent

Graves	Newton
--------	--------

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

The amendment by Mr. Uher to Committee Amendment No. 1 to HB 448 was then adopted by the following vote:

Yeas—89

Adams	Clayton	Heatly	Ligarde
Agnich	Cobb	Hendricks	Lombardino
Allen, John	Daniel	Hilliard	McAlister
Angly	Davis, D.	Holmes, T.	McKissack
Atwell	Davis, H.	Howard	Moncrief
Baker	Doran	Hubenak	Moore, A.
Bigham	Earthman	Hull	Moore, G.
Blanton	Finnell	Ingram	Nabers
Bowers	Foreman	Jones, D.	Niland
Braecklein	Golman	Jones, E.	Ogg
Burgess	Grant	Jones, G.	Orr
Bynum	Hanna, Joe	Jungmichel	Parker, W.
Calhoun	Harding	Kaster	Pickens
Cates	Hawkins	Kost	Poerner
Cavness	Hawn	Lemmon	Poff
Christian	Head	Lewis	Presnal

Price	Short	Swanson	Wieting
Rosson	Silber	Tarbox	Williamson
Salter	Slack	Traeger	Wolff
Schulle	Slider	Uher	Wyatt
Semos	Solomon	Von Dohlen	
Shannon	Spurlock	Ward	
Sherman	Stewart	Wayne	

Nays—52

Allen, Joe	Cruz	Johnson	Parker, C.
Allred	Doyle	Kilpatrick	Patterson
Atwood	Dramberger	Kubiak	Reed
Bass, B.	Farenthold	Lee	Rodriguez
Bass, T.	Finck	Longoria	Salem
Beckham	Finney	Mengden	Sanchez
Blythe	Gammage	Moore, T.	Santiesteban
Braun	Garcia	Moreno	Simmons
Caldwell	Hale	Murray	Smith
Carrillo	Hannah, John	Nelms	Truan
Clark	Harris	Neugent, D.	Tupper
Cole	Haynes	Nichols	Vale
Craddick	Holmes, Z.	Nugent, J.	Williams

Absent

Denton	Graves	Lovell	Newton
Floyd			

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

Mr. Uher moved to reconsider the vote by which the amendment offered by himself to Committee Amendment No. 1 was adopted and to table the motion to reconsider.

The motion to table prevailed.

Mr. Jim Nugent offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 448 by adding a new Section 2a to read as follows:

"Section 2a. Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes), is amended by adding a Subsection (a-1), to read as follows:

'(a-1). Fifty cents out of each hourly charge in item 1 and three dollars out of each hourly charge in item 2 of Subsection (a) of this Section shall be placed in a scholarship fund at each institution to be administered by that institution to give scholarships to needy students. Standards for determining need shall be formulated by each institution.'

Representative Newton entered the House and was announced present.

HB 448—(Consideration continued)

Mr. Hull offered the following substitute amendment for the Jim Nugent amendment:

Amend Committee Amendment No. 1 to HB 448 by adding a new Section 2a to read as follows:

"Section 2a. Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes) is amended by adding a Subsection (a-1), to read as follows:

'(a-1). One dollar out of each hourly charge in item 1 and five dollars out of each hourly charge in item 2 of Subsection (a) of this Section shall be placed in a scholarship fund at each institution to be administered by that institution to give scholarships to needy students. Standards for determining need shall be formulated by each institution.

(a-2) No more than ten (10%) percent of said scholarship funds may be allocated to out-of-state students.'"

Mr. Carl Parker raised a point of order against further consideration of the above amendment on the grounds that the amendment was not written and on the Speaker's desk.

The Speaker sustained the point of order.

Mr. Carl Parker raised a point of order against further consideration of the Jim Nugent amendment on the grounds that the amendment is not germane to the caption of the bill.

The Speaker overruled the point of order.

Mr. Hull offered the following substitute amendment for the Jim Nugent amendment:

Amend Committee Amendment No. 1 to HB 448 by adding a new Section 2a to read as follows:

"Section 2a. Section 1, Chapter 196, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 2654c, Vernon's Texas Civil Statutes), is amended by adding a Subsection (a-1), to read as follows:

'(a-1) Fifty cents out of each hourly charge in item 1 and three dollars out of each hourly charge in item 2 of Subsection (a) of this Section shall be placed in a scholarship fund at each institution to be administered by that institution to give academic scholarships to needy students. Standards for determining need shall be formulated by each institution.

(a-2) No more than ten (10%) percent of said scholarship funds may be allocated to out-of-state students.'"

Mr. Carl Parker raised a point of order against further consideration of the amendment on the grounds that the amendment is not germane to the body of the bill.

The Speaker overruled the point of order.

Mr. Braun raised a point of order against further consideration of HB 448 on the grounds that the time had arrived for consideration of HB 730 which had been set as a Special Order for this hour.

The Speaker overruled the point of order.

The substitute amendment by Mr. Hull for the Jim Nugent amendment was adopted by the following vote:

Yeas—83

Agnich	Finck	Jungmichel	Sanchez
Allen, John	Finnell	Kaster	Santiesteban
Allred	Finney	Kost	Schulle
Angly	Foreman	Lemmon	Semos
Atwell	Garcia	Lewis	Shannon
Baker	Golman	Ligarde	Sherman
Bass, T.	Grant	Lombardino	Short
Beckham	Hannah, John	Lovell	Slider
Blanton	Harding	McKissack	Solomon
Blythe	Hawkins	Moncrief	Spurlock
Braecklein	Hawn	Moore, A.	Swanson
Bynum	Head	Murray	Tarbox
Cates	Heatly	Newton	Traeger
Cavness	Hendricks	Niland	Tupper
Clayton	Hilliard	Nugent, J.	Uher
Cobb	Holmes, T.	Parker, W.	Von Dohlen
Cole	Howard	Poerner	Ward
Craddick	Hubenak	Presnal	Wayne
Cruz	Hull	Price	Wieting
Davis, D.	Ingram	Reed	Wyatt
Davis, H.	Jones, D.	Rosson	

Nays—56

Adams	Denton	Jones, G.	Patterson
Allen, Joe	Doran	Kilpatrick	Pickens
Atwood	Dramberger	Kubiak	Poff
Bass, B.	Earthman	Lee	Rodriguez
Bigham	Farenthold	McAlister	Salem
Bowers	Floyd	Mengden	Salter
Braun	Gammage	Moore, G.	Silber
Burgess	Hale	Moore, T.	Simmons
Caldwell	Hanna, Joe	Nabers	Smith
Calhoun	Harris	Nelms	Stewart
Carrillo	Haynes	Nichols	Truan
Christian	Holmes, Z.	Ogg	Vale
Clark	Johnson	Orr	Williams
Daniel	Jones, E.	Parker, C.	Wolff

Absent

Doyle	Longoria	Neugent, D.	Williamson
Graves	Moreno	Slack	

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

MESSAGE FROM THE SENATE

Austin, Texas, March 3, 1971

Honorable Gus Mutscher, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has passed the following:

HCR 62, By Foreman, et al: In memory of Doyle Oliver Curington.

Respectfully,
CHARLES A. SCHNABEL
Secretary of the Senate

HB 448—(Consideration continued)

Mr. Grant Jones moved to table the Jim Nugent amendment, as substituted.

A record vote was requested.

The motion to table was lost by the following vote:

Yeas—66

Atwell	Doyle	Kilpatrick	Reed
Atwood	Dramberger	Kost	Salter
Baker	Earthman	Lee	Semos
Bass, T.	Floyd	Lemmon	Shannon
Bowers	Garcia	Lombardino	Sherman
Braecklein	Hanna, Joe	McAlister	Short
Burgess	Hawkins	McKissack	Slack
Bynum	Hawn	Mengden	Slider
Calhoun	Heatly	Moore, G.	Swanson
Cates	Holmes, T.	Nabers	Tarbox
Cavness	Howard	Newton	Traeger
Christian	Ingram	Ogg	Uher
Clayton	Johnson	Orr	Wayne
Daniel	Jones, D.	Pickens	Wieting
Davis, D.	Jones, E.	Poerner	Williamson
Davis, H.	Jones, G.	Poff	
Doran	Jungmichel	Price	

Nays—75

Adams	Allen, Joe	Allred	Bass, B.
Agnich	Allen, John	Angly	Beckham

Bigham	Golman	Longoria	Santiesteban
Blanton	Grant	Lovell	Schulle
Blythe	Hale	Moncrief	Silber
Braun	Hannah, John	Moore, A.	Simmons
Caldwell	Harding	Moreno	Smith
Carrillo	Harris	Murray	Solomon
Clark	Haynes	Nelms	Spurlock
Cobb	Head	Nichols	Stewart
Cole	Hendricks	Niland	Truan
Cruz	Hilliard	Nugent, J.	Tupper
Denton	Holmes, Z.	Parker, W.	Vale
Farenthold	Hubenak	Patterson	Von Dohlen
Finck	Hull	Presnal	Ward
Finnell	Kaster	Rodriguez	Williams
Finney	Kubiak	Rosson	Wolff
Foreman	Lewis	Salem	Wyatt
Gammage	Ligarde	Sanchez	

Absent

Craddick	Moore, T.	Neugent, D.	Parker, C.
Graves			

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

The Jim Nugent amendment, as substituted, was then adopted.

Mr. Bynum offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 448 by adding to Sec. 1 (a) the following item No. 17:

"The provisions of this Section shall not apply to any fully state supported post-high school Technical and Vocational Institution."

Signed: Bynum, Poff, Murray, Denton, and Tom Moore.

The amendment was adopted without objection.

Mr. Silber offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1, Section 1 by adding subsection (c) as follows:

Nonresident students presently enrolled in the several institutions with 60 semester credit hours or more shall pay the same tuition as resident students as long as they continue to successfully pursue their course of work.

The amendment was adopted without objection.

Committee Amendment No. 1, as amended, was adopted.

HB 448, as amended, was passed to engrossment by the following vote:

Yeas—96

Adams	Finney	Kilpatrick	Price
Agnich	Floyd	Kost	Rosson
Allen, John	Golman	Lee	Salem
Angly	Grant	Lemmon	Schulle
Atwell	Hale	Lewis	Semos
Baker	Hanna, Joe	Lombardino	Shannon
Blanton	Harding	McAlister	Sherman
Bowers	Hawkins	McKissack	Short
Braecklein	Hawn	Mengden	Silber
Burgess	Head	Moncrief	Slack
Bynum	Heatly	Moore, A.	Slider
Calhoun	Hendricks	Moore, G.	Solomon
Cates	Hilliard	Nabers	Spurlock
Cavness	Holmes, T.	Newton	Swanson
Christian	Howard	Niland	Tarbox
Clayton	Hubenak	Nugent, J.	Traeger
Cobb	Hull	Ogg	Uher
Daniel	Ingram	Orr	Von Dohlen
Davis, D.	Johnson	Parker, W.	Ward
Davis, H.	Jones, D.	Patterson	Wayne
Doran	Jones, E.	Pickens	Wieting
Dramberger	Jones, G.	Poerner	Williamson
Earthman	Jungmichel	Poff	Wolff
Finnell	Kaster	Presnal	Wyatt

Nays—49

Allen, Joe	Craddick	Kubiak	Salter
Allred	Cruz	Ligarde	Sanchez
Atwood	Denton	Longoria	Santiesteban
Bass, B.	Doyle	Lovell	Simmons
Bass, T.	Farenthold	Moore, T.	Smith
Beckham	Finck	Moreno	Stewart
Bigham	Foreman	Murray	Truan
Blythe	Gammage	Nelms	Tupper
Braun	Garcia	Neugent, D.	Vale
Caldwell	Hannah, John	Nichols	Williams
Carrillo	Harris	Parker, C.	
Clark	Haynes	Reed	
Cole	Holmes, Z.	Rodriguez	

Absent

Graves

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

Mr. Grant Jones moved to reconsider the vote by which HB 448 was passed to engrossment and to table the motion to reconsider.

The motion to table prevailed.

HB 448—ORDERED PRINTED

Mr. Braun moved that HB 448, as engrossed, be printed and that copies be placed on the Members' desks.

The motion prevailed without objection.

HB 730 ON SECOND READING

The Speaker laid before the House, as a Special Order, on its second reading and passage to engrossment,

HB 730, A bill to be entitled An Act raising revenue for the support of state government; amending Article 20.02, Section (A) of Article 20.021, Section (B) of Article 20.05, and Section (J) of Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, and Subdivision (2), Subsection K, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 1066c, Vernon's Texas Civil Statutes), to increase the rate of the Limited Sales, Excise, and Use Tax; amending Sections (1) and (2), Article 6.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, to increase the rate of the motor vehicle retail sales and use tax; exempting certain items contracted or bid for before the effective date; providing an effective date; and declaring an emergency.

The bill was read second time.

Mr. Sherman moved that consideration of HB 730 be postponed until Monday, April 5 at 11:00 a.m.

Mr. Atwell moved to table the motion to postpone.

The motion to table prevailed.

Mr. Carl Parker moved that consideration of HB 730 be postponed until Monday, March 8 at 11:00 a.m.

Mr. Atwell moved to table the motion to postpone.

The motion to table prevailed by the following vote:

Yeas—98

Adams	Davis, D.	Heatly	Ligarde
Allen, John	Davis, H.	Hendricks	Lombardino
Atwell	Doran	Hilliard	Longoria
Atwood	Doyle	Holmes, T.	Lovell
Baker	Finnell	Hubenak	McAlister
Blanton	Finney	Hulj	McKissack
Braecklein	Foreman	Ingram	Moncrief
Burgess	Garcia	Johnson	Moore, A.
Bynum	Golman	Jones, D.	Moore, G.
Calhoun	Hanna, Joe	Jones, G.	Murray
Carrillo	Harding	Jungmichel	Nabers
Cates	Hawkins	Kaster	Neugent, D.
Cavness	Hawn	Kilpatrick	Newton
Clayton	Haynes	Kost	Niland
Cobb	Head	Lemmon	Nugent, J.

Ogg	Salter	Slider	Ward
Orr	Sanchez	Smith	Wayne
Parker, W.	Santiesteban	Solomon	Wieting
Patterson	Schulle	Spurlock	Williamson
Pickens	Semos	Swanson	Wolff
Poerner	Shannon	Tarbox	Wyatt
Poff	Short	Traeger	
Presnal	Silber	Uher	
Rosson	Slack	Von Dohlen	

Nays—50

Agnich	Cole	Harris	Price
Allred	Craddick	Holmes, Z.	Reed
Angly	Cruz	Howard	Rodriguez
Bass, B.	Daniel	Jones, E.	Salem
Bass, T.	Denton	Kubiak	Sherman
Beckham	Dramberger	Lee	Simmons
Bigham	Earthman	Lewis	Stewart
Blythe	Farenthold	Mengden	Truan
Bowers	Finck	Moore, T.	Tupper
Braun	Floyd	Moreno	Vale
Caldwell	Gammage	Nelms	Williams
Christian	Grant	Nichols	
Clark	Hale	Parker, C.	

Absent

Allen, Joe	Graves	Hannah, John
------------	--------	--------------

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

Mr. John Hannah moved to consider HB 730 Article by Article.

There was no objection offered and it was so ordered.

(Mr. Hale in the Chair)

MESSAGE FROM THE SENATE

Austin, Texas, March 3, 1971

Honorable Gus Mutscher, Speaker of the House of Representatives.

Sir: I am directed by the Senate to inform the House that the Senate has passed the following:

HCR 25, By Clark, Harris, Haynes, et al: Memorializing the Congress of the United States to urge the Honorable Elliot L. Richardson, Secretary of Health, Education and Welfare, to continue operating the United States Public Health Service Hospital in Galveston and the Outpatient Clinics in Houston and Port Arthur.

HB 377, By Floyd: Prohibiting hunting from any type of aircraft or airborne device and authorizing hunting game animals and game birds, not classified as migratory, from an automobile on private property; amending

Article 901, Penal Code of Texas, 1925, as amended; and declaring an emergency.

HB 382, By Schulle: Repealing Chapter 31, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended (Article 978h, Vernon's Texas Penal Code), relating to the hunting of buffalo; and declaring an emergency.

HB 381, By Schulle: Removing buffalo from the game animal list; amending Article 892, Penal Code of Texas, 1925, as amended; and declaring an emergency.

HB 283, By Lombardino, et al: Relating to a change in the method of computing deductions from wages and pensions for members of certain firemen and policemen's pension funds in certain cities; amending Section 4, 8(a), 10, 11, 13, and 19, and Subsection (a), Section 15, Chapter 105, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article 6243f, Vernon's Texas Civil Statutes); and declaring an emergency.

Respectfully,
CHARLES A. SCHNABEL
Secretary of the Senate

HB 730—(Consideration continued)

Mr. Atwell offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend HB 730 by striking all below the enacting clause and substituting the following:

Article 1.

Section 1. Article 20.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 20.02. Imposition of Limited Sales Tax. There is hereby imposed a limited sales tax at the rate of four percent (4%) on the receipts from the sale at retail of all taxable items within this state."

Sec. 2. Section (A), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(A) Every retailer shall add the sales tax imposed by Article 20.02 of this Chapter to his sale price and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. It is further specified that where tangible personal property is segregated in contemplation of transfer of title or possession and is thereafter to be transported by common carrier from the seller to the buyer, with the price fixed F.O.B. the seller's place of business, and with transportation charges separately stated, the tax herein imposed shall be computed only upon the basis of the charge for the tangible personal property itself, exclusive of the separately stated and independently fixed transportation charges. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.12	No Tax
.13 to .37	\$.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04

Provided, that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four percent (4%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax.

"When several taxable items are purchased together and at the same time, the tax shall be computed on the total amount of the several items less the amount paid for any article or item of tangible personal property specifically exempt under the provisions of Article 20.04 of this Chapter.

"The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the tax imposed in this Chapter or for any other purpose in connection with such tax is prohibited."

Sec. 3. Section (B), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(B) Method Retailer Is to Use in Computing Tax. The limited sales tax levied under Article 20.02 shall be computed and paid to the Comptroller on the basis of the same percentage rate as is provided in Article 20.02 of this Title, applied to all receipts from the total sales of taxable tangible personal property and taxable services sold by the retailer; provided any retailer who can establish to the satisfaction of the Comptroller that fifty percent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is twelve cents (12¢) or less may exclude the receipts from such sales when reporting and paying the tax imposed by Article 20.02 of this Chapter. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the Limited Sales, Excise and Use Tax and the retailer shall be subject to assessment for back taxes, penalties and interest as provided for in this Chapter."

Sec. 4. Section (J), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(J) Commingled Tax and Receipts. Any retailer who establishes an accounting system under which the amount of tax collected pursuant to this Chapter is commingled with the receipts from the sale of taxable items may determine taxable receipts in the following manner:

"(1) He shall subtract from his total receipts the receipts from any sales which are specifically exempt from or otherwise excluded from the tax

imposed by this Chapter. The remainder shall consist of the receipts from the sale of taxable items plus the tax collected pursuant to the provisions of this Chapter.

"(2) This remainder shall then be divided by 1.04. The answer resulting shall be the taxable gross receipts of the retailer for reporting purposes as prescribed by Section (B) of this Article.

"The sole purpose of this Section is to permit the widest possible latitude in the internal accounting system of retailers and to avoid requiring certain retailers to remit to the state a tax computed upon a base which already includes the tax imposed by this Chapter. Nothing herein shall be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by Article 20.021 of this Chapter."

Sec. 5. Subdivision (2), Subsection K, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) When such Limited Sales, Excise and Use Tax imposed by the State of Texas shall be at the rate of four percent (4%) on the receipts from the sale at retail of all taxable items within this state which is subject to such tax, and the Local Sales and Use Tax imposed in any city under authority of this Act shall be at the rate of one percent (1%) on the receipts from the sale of all taxable items within such city which is subject to such tax, the total gross rate of such combined taxes in such city shall be at the rate of five percent (5%) on combined taxes in such city on the receipts from the sale of all tangible personal property within such city which is subject to such taxes. When the sale price shall involve a fraction of a dollar, the taxes shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.09	No Tax
.10 to .29	\$.01
.30 to .49	.02
.50 to .69	.03
.70 to .89	.04
.90 to 1.09	.05

Provided, that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying five percent (5%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax.

"Provided, however, that any retailer who can establish to the satisfaction of the Comptroller that fifty percent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is nine cents (\$.09) or less may exclude the receipts from such sales when reporting and paying the tax imposed under this Act and the Limited Sales, Excise and Use Tax imposed by the State of Texas. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has

submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the taxes imposed by this Act and the Limited Sales, Excise and Use Tax Act and the retailer shall be subject to assessment for both taxes, penalties and interest as provided for in this Act and the Limited Sales, Excise and Use Tax Act.

Article 2.

Section 1. Sections (1) and (2), Article 6.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, are amended to read as follows:

"(1) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this state, such tax to be equal to four percent (4%) of the total consideration paid or to be paid for said motor vehicle.

"(2) There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside this state and brought into this state for use upon the public highways by any person, firm, or corporation who is a resident of this state or who is domiciled or doing business in this state. The tax imposed by this subsection shall be equal to four percent (4%) of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person, firm or corporation operating said motor vehicle upon the public highways of this state."

Article 3.

Section 1. Section (a), Article 23.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended is amended to read as follows:

"(a) There is hereby levied a tax upon the cost of occupancy of any room or space furnished by any hotel where such cost of occupancy is at the rate of Two Dollars (\$2) or more per day, such tax to be equal to four percent (4%) of the consideration paid by the occupant of such room to such hotel."

Article 4.

Section 1. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a new Chapter 16 to read as follows:

"Chapter 16. Stock, Bond and Security Transaction Tax

"Article 16.01. Definitions. In this Act, unless the context requires a different definition:

"(1) 'Transaction' means any sale, purchase, agreement to sell or purchase, memorandum of sale or purchase, delivery, or transfer of legal or equitable title, whether or not shown by the books of the corporation or other organization (or by assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer,

purchase, or sale); and whether or not the holder acquires a beneficial interest in the instruments.

"(2) 'Shares or certificates' means any shares or certificates of stock, certificates of rights to subscribe or receive stock, certificates of deposit representing any interest in taxable shares or certificates, certificates of interest in any business conducted by trustee or trustees, and certificates of indebtedness.

"Article 16.02 Imposition of Tax; Exceptions. (a) There is imposed a tax of \$1.00 on each transaction of sale, purchase, or transfer of shares, certificates, bonds, or securities, issued by the same company or governmental entity when the sale, purchase, or transfer occurs within six months of the acquisition of the shares, certificates, bonds, or securities.

"(b) The tax imposed by this Article does not apply to:

"(1) the initial issue of stocks by a corporation;

"(2) the sale or purchase of stocks owned by a mutual fund so long as it is not the stocks of the mutual fund itself which are sold; or

"(3) bonds or securities issued by the United States government, a state or local government, a county, or any political subdivision.

"Article 16.03. Initial Collection. The tax imposed by Article 16.02 of this chapter shall be collected by the broker. If there is no broker involved in the transaction, the seller of the stock, bond, or security shall collect the tax. The person collecting the tax may retain 10 percent of the amount collected as payment for collecting the tax.

"Article 16.04. Payment to Comptroller. The person collecting the tax shall file the proper report and pay the tax, less his reimbursement of 10 percent, to the comptroller of public accounts, before the end of the month following each calendar quarter.

"Article 16.05. Comptroller's Regulations. The comptroller of public accounts shall issue necessary regulations providing for collection of the transactions tax and for keeping of records.

"Article 16.06. Penalties for Failure to Pay or Report. If any person shall fail to file a report as required herein or shall fail to pay to the comptroller the tax as imposed herein when said report or payment is due, he shall forfeit five percent (5%) of the amount due as a penalty, and after the first thirty (30) days he shall forfeit an additional five percent (5%). Provided, however, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six percent (6%) per annum, beginning sixty (60) days from the date due.

"Article 16.07. Allocation of Revenue. Revenues received from the tax imposed by this chapter shall be paid into the general revenue fund."

Article 5.

Section 1. Article 21.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.01. Reports Required

"Every person, firm, association of persons, or corporation owning or operating any place of amusement which charges a price or fee for admission to motion pictures, operas, plays, concerts, musical shows, skating exhibitions and shows, skating rinks open to skating by patrons and like amusements, or to horse racing, dog racing, motorcycle racing, or boat racing, shall file with the Comptroller a quarterly report on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month; said report shall show the gross amount received and the price or fee for admission; provided, however, that the report herein required shall be made upon the day following each amusement, exhibition, entertainment or contest, when such amusement, exhibition, entertainment or contest is not held continuously at a regular fixed place or establishment; and further provided, however, no tax shall be levied under this Chapter on the admission to any amusement, the proceeds of which inure exclusively to the benefit of the state, religious, educational or charitable institutions, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual, or for any type of exhibition or amusement conducted by and exclusively for the benefit of a nonprofit corporation organized and chartered under the laws of the State of Texas for the purpose of encouraging agriculture by the maintenance of public fairs and exhibitions of livestock, or for admission to any rodeo; and provided further, that an operator of amusements where the admission charge is less than One Dollar and five cents (\$1.05) per person, and where no tax is due hereunder, shall be relieved from filing of a report and the payment of a tax levied under the provisions of this Chapter. Said person, firm, association of persons, or corporation, at the time of making such report shall pay to the Treasurer of this State a tax in rates and amounts as hereinafter provided."

Sec. 2. Article 21.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended to read as follows:

"Article 21.02. Tax Imposed

"(1) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays, concerts, musical shows, skating exhibitions and shows, skating rinks open to skating by patrons, and like amusements, where the admission charged is in excess of One Dollar and five cents (\$1.05) and not more than One Dollar and fifteen cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and fifteen cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and twenty-five cents (\$1.25).

"(2) There is hereby levied a tax equivalent to ten per centum (10%) of the amount paid as admission to horse racing, dog racing, motorcycle racing, and boat racing, but not automobile racing.

"(3) There is hereby levied on the amounts paid for admission by season ticket, subscription, or lease for admission to any place, a tax equivalent to ten per centum (10%) of the amount paid therefor, provided a single admission to the place would be subject to taxation under the provisions of this Chapter.

"(4) The taxes herein levied shall not apply to complimentary tickets and passes for which no admission charge is collected.

"(5) The taxes herein levied shall not apply to events originated by non-profit organizations where twenty-five percent (25%) of the total income of such organization is derived from contributions."

Article 6.

Section 1. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, is amended by adding Chapter 26 to read as follows:

"CHAPTER 26 "ENTERTAINMENT TAX

"Article 26.01. Tax Imposed

"(a) There is hereby imposed an entertainment tax at the rate of ten percent on receipts collected by any person, except as specifically exempted under this chapter, which are collected as

(1) a charge for admission to any contest or event in which the participants are professionals or receive monetary compensation for participating; or

"(2) a charge denominated as an admission charge to a dance hall, private club, nightclub, bottle club, lounge, cabaret, tavern, dinner club, or dining room when the charge is made for the privilege of any use of the facilities of the person making the charge in order to consume food or beverages, to dance, or to view a floor show or other entertainment; or

"(3) a charge for admission to any natural or man-made phenomena, object or structure or curiosity or interest, such as caverns, amusement parks, buildings, ruins and guided tours of such natural or man-made phenomena, object, structure, curiosity or interest, and shall include charges over fifty cents (50¢) made for the privilege of participating in or using any of the additional amusements therein or connected therewith.

"(b) 'Receipts' or 'receipts from admission' as used in this chapter means the total consideration received by a taxpayer as defined in Article 26.03 of this chapter, whether the consideration is paid as dues; under the terms of a subscription, membership or other card, season or other ticket, or lease for admission; or without the delivery or use of any receipt, ticket, or other written instrument or device. 'Receipts' or 'receipts from admission' as used in this chapter does not include that portion of the consideration collected as federal excise tax.

"(c) The tax imposed by this chapter is in addition to any other excise tax imposed by the state, any political subdivision of the state, or any city.

"Article 26.02. Exemptions

"(a) There shall be exempt from the tax imposed by this chapter

"(1) receipts from admissions which inure exclusively to the benefit of

state, religious, educational or charitable institutions, if no part of the net earnings thereof inure to the benefit of any private stockholder or individual;

"(2) receipts from any rodeo or automobile race, regardless of whether the participants are amateurs or professional performers;

"(3) receipts from the general admission fee charged in connection with any county fair, exhibit, or show which is held under the authority of Chapter 20, Acts of the 43rd Legislature, 4th Called Session, 1934, as amended (Article 2372d, Vernon's Texas Civil Statutes), or any annual fair conducted by a nonprofit corporation organized under Subdivision 7, Article 1302, Revised Civil Statutes of Texas, 1925, or organized under the Texas Non-Profit Corporation Act for the same purposes;

"(4) receipts from any event originated by nonprofit organizations where twenty-five percent (25%) of the total income of such organization is derived from contributions.

"(b) For the purpose of the proper administration of this chapter, it shall be presumed that all places of business and all persons who collect receipts or receipts from admission subject to tax under Article 26.01 of this chapter are liable for the tax unless the contrary is established. The burden of proving that receipts are exempt under the provisions of this article is upon the person collecting or receiving the receipts, unless he has obtained from the comptroller an exemption certificate.

"Article 26.03. Method of Collection

"(a) The entertainment tax imposed by this chapter shall be added to the receipts from admission, and when added, the tax shall become a part of the admission charge. The tax shall be collected by the taxpayer, as herein defined, from the payees of the receipts from admission, and said tax shall be reported and paid to the state by the taxpayer in the manner and at the times provided for herein. The granting of a permit to an owner or operator to collect such taxes for and in behalf of the state shall be deemed to establish a fiduciary relationship between such permit holder and the state.

"(b) Except as hereinafter provided, the tax imposed by this chapter shall be due and payable quarterly at the office of the comptroller at Austin on the twenty-fifth day of January, April, July and October for the quarter ending on the last day of the preceding month.

"(c) Any person, firm, association, or corporation required to obtain a permit in accordance with Article 26.05 of this chapter shall be referred to herein as the taxpayer and shall be subject to the liabilities and responsibilities imposed by this chapter.

"(d) The taxpayer shall deduct and withhold from the taxes otherwise due from him two percent (2%) of such taxes otherwise due or One Thousand Dollars (\$1,000), whichever is the lesser, to reimburse himself for the cost of collecting the tax. In the event the payment of any taxes due under the applicable provisions of this chapter are not paid within the time required, or in the event that the taxpayer does not file reports when due as provided by the provisions of this chapter, the taxpayer forfeits his

claim and right to the discount of two percent (2%) or One Thousand Dollars (\$1,000), as the case may be.

"(e) The taxpayer shall pay the state at the office of the comptroller at Austin the amount of taxes required to be collected under this chapter on the dates on which said taxes are due under the applicable provisions of this chapter. At the same time that the tax herein is payable, the taxpayer shall file with the comptroller at Austin a report on such form as the comptroller shall prescribe, showing the receipts from admission and the price or charge for each class of admission.

"(f) The tax imposed by this chapter upon the receipts from admission shall be payable on the dates set forth in paragraph (b) of this article, except in the case of taxes due on receipts from admission to events or contests not held at a regular fixed place or establishment, in which case the tax shall be payable on the day following the event or contest (excluding Saturdays, Sundays, and legal holidays). However, the taxpayer shall have the right to request an extension of time within which to pay the tax or file such report.

"(g) The comptroller may require returns or payments to be made at times other than provided in this chapter.

"Article 26.04. Records Required

"(a) The taxpayer shall make and keep records in Texas at an address shown on the reports to be filed with the comptroller for a period of two years. The records shall correctly reflect (1) the date of the event for which an admission charge was made; (2) the charge for admission; (3) the number of patrons admitted; and (4) if admitted gratuitously, the number of patrons so admitted. The records shall be open to inspection by the comptroller and the attorney general, or their duly authorized agents.

"(b) In addition, for the purpose of enabling the comptroller or his authorized agent to determine the amount of tax collected and payable to the state, or which should have been collected and paid to the state, or to determine whether a tax liability has been incurred, the comptroller or his authorized representative shall have the right to inspect any premises, and any books and records that may be kept incident to the conduct of any business or venture having receipts subject to tax under this chapter, as well as the books and records required to be kept by this chapter.

"(c) For the foregoing purposes, the comptroller or his duly authorized agent shall also have the right to remain upon said premises for such length of time as is necessary to determine fully whether a tax liability has been incurred and the amount thereof. If the taxpayer fails to keep the required records or refuses to allow their inspection, the taxpayer shall forfeit to the State of Texas as a penalty not more than One Thousand Dollars (\$1,000) for each violation, and each violation shall constitute a separate offense. The venue for the collection of such penalties shall be in Travis County, Texas.

"Article 26.05. Permit Required

"(a) From and after the effective date of this chapter, every person, firm, association, or corporation owning or operating, or who desires to own or operate, any place of business or venture which makes a charge for

admission which is subject to tax under this chapter shall file with the comptroller a duly acknowledged application for an owner's or operator's permit. The application shall be accompanied by an annual fee of Twenty-five Dollars (\$25) to pay the expenses of administering and enforcing the provisions of this chapter. The permit shall be on the form prescribed by the comptroller. An application shall be filed and a permit obtained for all places of business and ventures charging admission owned or operated by the applicant. The application form shall set forth the name or names under which such owner or operator transacts or intends to transact each business or venture, as well as such owner's or operator's principal office, residence, or place of business in Texas, and if other than an individual, the principal officers of the corporation or the members of the partnership or association, as the case may be, and their office, street, or post office address, as well as such other information as the comptroller may reasonably require. No one shall operate any such place of business or venture charging admission until the application has been filed and a permit issued. The permit shall not be assignable. A permit shall be required of an owner or operator for each place of business and venture to be operated. The application for a permit and the permit issued shall designate each location of the place of business or venture to be operated, by street address and town, and the permit may be amended from time to time in order to designate additional locations without the payment of an additional fee. No place of business or venture subject to the tax imposed by this chapter shall be operated unless the location of such place of business or venture is designated on a permit. Each applicant shall be issued a permit for each place of business or venture and shall display the permit conspicuously at the place.

"(b) Upon receipt of the application and the posting of bond required by Article 26.07 of this chapter, the comptroller shall issue to the owner or operator a nonassignable permit authorizing the operation of a designated place or places of business or ventures charging admission in this state from the date of the issuance of said permit, until and including the following August 31. On or before September 1 of each year, and before any owner or operator shall operate a place of business or venture in this state after August 31 of that year, an application shall be filed, a bond posted, and a permit obtained for the succeeding fiscal year. Said permit shall provide that the same is revocable and shall be cancelled upon violation of any provisions of this chapter. If such permit is cancelled or suspended, said owner or operator shall not operate or allow to be operated any place of business or venture charging admission within the state until a new permit is granted or the original permit is reinstated. However, no permit shall be issued or reinstated where it appears from an audit made as herein provided by an authorized representative of the comptroller that the applicant is delinquent in the remittance or payment of any tax, penalty, or interest under the provisions of this chapter.

"(c) In the event that a place of business or a venture for which admission is charged is not held at a regular fixed place or establishment, then the owner or operator shall make application for a permit as required in Paragraph (a) of this article within a period of twenty (20) days prior to the date contemplated for the event or contest for which admission is charged is scheduled to begin. The permit shall be effective for a period no longer than the period set forth in the application as being the period during which the event or contest will be held. Such application shall also set forth the location or locations, where the event or contest will be held and the permit shall disclose such location or locations.

"(d) A corporation or organization which is otherwise exempt from the application of this chapter may apply and receive from the comptroller an exemption certificate on a form prescribed by the comptroller upon submission of satisfactory evidence that such corporation or organization is exempt. The application for exemption shall designate the date or dates and place of the activity for which exemption is claimed. Issuance of an exemption certificate shall be presumptive only of the exempt nature of the activity for which the certificate was issued.

"(e) Upon receipt of an appropriate application for permit and bond, the comptroller shall not refuse to issue a permit because the applicant is contesting in good faith an admission tax otherwise due for a period prior to the effective date of this chapter. However, nothing contained herein shall be construed as meaning that any such tax is forgiven. All admission or entertainment taxes, penalties, and interest accruing to the state by virtue of any of the reenacted or repealed provisions set out in this chapter before the effective date of this chapter shall be and remain valid and binding obligations to the state for all taxes, penalties, and interest accruing under the provisions of all prior laws, and all such taxes, penalties, and interest now or hereafter becoming delinquent to the state are hereby expressly preserved and declared to be legal and valid obligations to the state.

"Article 26.06. Cancellation of Permit

"(a) The comptroller, or any duly authorized agent of the comptroller, is hereby authorized to cancel, or to refuse the issuance, extension, or reinstatement of, any owner's or operator's permit or exemption certificate as provided under the terms of this chapter to any person who has violated or has failed to comply with any of the provisions of this chapter, including any of the following offenses: (1) failure or refusal to remit or pay to the state any excise tax imposed by this chapter, which tax is shown to be owing to the state by an audit made by a duly authorized agent of the comptroller from any report filed with the comptroller or from any books or reports required to be kept or any books or records authorized to be audited by the provisions of this chapter; (2) failure to file any return or report required under the provisions of this chapter; (3) making and filing with the comptroller of any false or incomplete application, return or report required under the provisions of this chapter; (4) failure to keep any books and records for the period and in the manner required to be kept; (5) falsifying, destroying, mutilating, removing from the state, or secreting any books and records, or any application, return, or report; (6) refusing to permit the comptroller, attorney general, or their duly authorized agents to inspect, audit, and examine any books and records required to be kept or to inspect any premises they are authorized to inspect; (7) engaging in any business or venture requiring a permit under the provisions of this chapter without obtaining and possessing a valid permit.

"(b) Before any permit or exemption certificate may be cancelled, or the issuance, reinstatement, or extension thereof refused, the comptroller shall give the applicant or permittee not less than fifteen (15) days' notice of a hearing at the office of the comptroller in Austin granting the applicant or permittee an opportunity to show cause before the comptroller, or his duly authorized agent, why such action should not be taken. The notice shall be in writing and may be mailed by United States registered mail to the applicant or permittee at his last known address, or may be delivered to him personally by a duly authorized agent of the comptroller,

and no other notice shall be necessary. The comptroller may prescribe rules of procedure and evidence of such hearings.

"(c) In the event that the permit or exemption certificate is cancelled by the comptroller, or his duly authorized agent after such hearing is held or opportunity to be heard has been given, all taxes which have been collected or which have accrued, although said taxes are not then due and payable to the state except by the provisions of this paragraph, shall become due and payable concurrently with the cancellation of the permit, and the permittee shall forthwith make a report covering the period of time not covered by the preceding reports he filed and ending with the date of cancellation, and shall pay to the state all taxes which have accrued under this chapter.

"After being given notice of cancellation, it shall be unlawful for any person to continue to operate a place of business or venture charging admission under the cancelled permit.

"(d) An appeal from any order of the comptroller or his duly authorized agent cancelling or refusing the issuance, extension, or reinstatement of any permit or exemption certificate may be taken to a district court of Travis County by the aggrieved permittee or applicant. The trial shall be de novo under the same rules as ordinary civil suits except that the following exceptions shall be applicable: (1) all appeals shall be perfected and filed within thirty (30) days after the effective date of the order, decision, or ruling of the comptroller or his duly authorized agent; (2) such proceedings shall have precedence over all other causes of a different nature; and (3) the order, decision, or ruling of the comptroller, or his duly authorized agent may for good cause shown be suspended or modified by the court pending a trial on the merits. Any suspension or modification shall not relieve the taxpayer or his surety of their obligations under this chapter or under any bond posted on behalf of such taxpayer.

"Article 26.07. Bond Required

"(a) Before any permit shall be issued and before engaging in the operation of a place of business or a venture charging admission on which a tax is required to be paid under this chapter every owner or operator shall execute and file with the comptroller a good and sufficient surety bond in the amount of One Thousand Dollars (\$1,000), which shall run concurrently with the permit. The bond shall be signed by the owner or operator and a surety company or companies authorized to do business in this state. The bond shall be payable to the State of Texas and the conditions, and form of the bond shall be prescribed by the comptroller. Each bond shall provide for the performance of all obligations, and the payment at Austin of all taxes due, and all costs, penalties, and interest provided in this chapter; provided, however, that in any event the total of all recoveries under such bond for any and all breaches of its conditions occurring at any time while it remains in force, shall not for any fiscal year exceed the penal sum named therein; provided further, that any such bond, continuous in form, may be, if sufficient and acceptable to the comptroller, continued in effect, by a renewal certificate, and, if so continued in effect, shall be sufficient to support the issuance of any new permit; and provided further, that the said renewal certificate, when issued, shall have all the force and effect of the original bond for the fiscal year for which said renewal certificate is issued. After six (6) months from the effective date thereof, the amount of the bond shall be adjusted

to a sum equal to no more than two (2) times the highest tax said owner or operator may be liable to the state for any quarter during the preceding six (6) months, or Ten Thousand Dollars (\$10,000), whichever is the lesser. The comptroller is hereby given the authority, in the appropriate case and upon submission of satisfactory evidence that the revenues will be protected, to reduce the amount of the bond below the maximums provided for herein; provided, however, that the amount of the bond shall never be less than One Hundred Dollars (\$100).

"(b) The comptroller shall have the right, if the amount of any existing bond shall become insufficient, or any surety on a bond shall become unsatisfactory or unacceptable, to require the filing of a new or an additional bond within the maximums provided for herein. When said new bond has been furnished, the comptroller shall cancel the bond for which said new bond is substituted. No recoveries or execution on any new bond may be demanded when any new permit is issued or revived, but no revocation or revival shall affect adversely to the comptroller the validity of any bond. Should any owner or operator fail or refuse to supply a new or additional bond within thirty (30) days after his receipt of notice of the comptroller's demand for a new or additional bond, the owner's or operator's permit shall be cancelled by the comptroller.

"(c) Any surety on any bond furnished by any owner or operator under this article shall be discharged from any and all liability to the state accruing on such bond after the expiration of thirty (30) days from the date on which the surety shall have lodged with the comptroller a written request for discharge. Provided, however, that the request shall not operate to release the surety from any liability already accrued, or which shall accrue prior to the expiration of said thirty-day period. The comptroller shall, promptly on the receipt of notice of such request by the surety, notify the owner or operator of the surety's request, and unless such owner or operator shall within thirty (30) days from the date of receipt of said notice file with the comptroller a new bond with a surety duly authorized to do business in this state, in the amount and form required by this article, the comptroller shall proceed to cancel the permit of the owner or operator in the manner provided in this chapter. If the new bond shall be furnished by said owner or operator as above provided, the comptroller shall cancel the bond for which the new bond is substituted.

"(d) In lieu of giving a bond, any owner or operator may deposit in the suspense account of the state treasury money in the amount of the bond that may be otherwise required by the terms of this article which shall not be released until a bond is executed in lieu thereof, or until the comptroller has made an audit of the owner's or operator's records and authorized the same released.

"(e) Suit may be filed against any surety on any bond, without first resorting to or exhausting the assets of the owner or operator, or without making the owner or operator, as principal obligor in said bond, a party to the suit.

"Article 26.08. Penalties

"(a) If any taxpayer fails to pay the tax or file a report as required by this chapter when the same shall be due, he shall forfeit five percent (5%) of the amount of tax due as a penalty, and after the first thirty (30) days, he shall forfeit an additional five percent (5%) of the tax. Provided, how-

ever, that the penalty shall never be less than One Dollar (\$1). Delinquent taxes and accrued penalty shall draw interest at the rate of six percent (6%) per annum beginning sixty (60) days from the date due. Venue for the collection of penalties shall be in Travis County.

“(b) All taxes, penalties, and cost of auditing, as provided for herein, due, or that might become due by any taxpayer to the state, shall be and become a preferred lien, first and prior to all other existing liens, contract or statutory, legal or equitable, and regardless of the time the lien originated upon all the property devoted to or used in the business or venture of the taxpayer charging admission, which property includes land, buildings, fixtures, equipment, trucks, cars, or other motor vehicles, or any other equipment used in carrying on such business or venture. The Attorney General of the State of Texas may file suit for the collection of taxes, penalty and interest and for the foreclosure of the lien herein provided in any court of competent jurisdiction in Travis County, Texas. If any person, firm, corporation, or association of persons are alleged to be liable for any tax imposed by this chapter and who fails or refuses to pay such tax and it becomes necessary to file suit or intervene in any manner for the establishment or collection of said taxes, claims or penalties, a claim showing the amount of the tax due the state certified to by the comptroller of public accounts or his chief clerk shall be admissible in evidence in such proceedings and shall be prima facie evidence of the contents thereof; provided, however that the incorrectness of said claim may be shown.

“The lien provided for herein shall not be valid or effective against any mortgagee, holder of a deed of trust, purchaser, pledgee, or judgment creditor acquiring title, lien, or other right or interest in the property covered by the lien provided for herein more than twelve (12) months immediately preceding the filing or recording of notice of the lien provided for herein.

“(c) Any taxpayer required to file a report or keep records as provided in this chapter, who fails or refuses to file the report on the dates provided in this chapter, or make and keep such records, or who violates any other provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than Twenty-five Dollars (\$25) nor more than One Hundred Dollars (\$100) and the fine is in addition to the civil penalties provided in Article 26.08 of this chapter. The venue for prosecutions under this paragraph shall be in Travis County.

“Article 26.09. Restraining Orders and Injunctions

“Any owner or operator of a place of business or venture charging admission who does not have an exemption certificate issued by the comptroller as provided for in this chapter, and who fails to obtain a permit and post bond in accordance with the provisions of this chapter, may be restrained or enjoined by court order from operating the place of business or venture without a permit and bond, or, if the owner or operator is entitled to an exemption certificate, without having a certificate. Suits for any restraining order or injunction shall be filed by the attorney general in a court of competent jurisdiction in Travis County. In the event that the owner or operator has already commenced the business or venture, then the attorney general may seek in his suit any taxes due under this chapter from the owner or operator as additional relief.

“This article shall be cumulative of and in addition to any other provisions of law authorizing any kind of injunctive relief.

"Article 26.10. Promulgation of Rules and Regulations by Comptroller

"The comptroller is vested with authority to promulgate rules and regulations, not inconsistent with this chapter, to enforce the provisions of this chapter and to facilitate the collection of taxes imposed."

Article 7.

Section 1. Article 12.20 of Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 12.20 Additional Franchise Tax for the Period Ending April 30, 1972

"(1) In addition to all other taxes, there is hereby levied on all corporations paying a franchise tax under the provisions of this Chapter for the preceding fiscal year as shown in the report required to be filed with the Comptroller of Public Accounts between January 1 and May 1, 1971 (or the initial or first year report required to be filed with the Comptroller of Public Accounts), under the provisions of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form for the period beginning on the effective date of this Act, and ending April 30, 1973.

"(2) The additional franchise tax levied by this Article shall be computed by multiplying the franchise tax due and payable under the provisions of Article 12.01, except Section (1)(a)(ii), and Article 12.19 by 18.18 percent.

"(3) The additional franchise tax levied by this Article shall be paid to the Comptroller of Public Accounts within thirty (30) days after the effective date of this Act. If any corporation fails to pay the additional tax levied by this Article within thirty (30) days after the effective date of this Act, the right of such corporation to do business in this state shall be forfeited on April 1, 1972, which forfeiture shall be consummated without judicial ascertainment by the Comptroller of Public Accounts in the same manner as provided for forfeiture in this Chapter, and provided further that such defaulting corporation shall be subject to the same penalties, liens and conditions as provided in this Chapter.

"(4) The Comptroller of Public Accounts shall have the right to make and promulgate rules and regulations and to prescribe and mail forms and notices necessary for the efficient and effective administration of the additional franchise tax levied by this Article.

"(5) The additional franchise tax levied by this Article shall expire on April 30, 1972."

Sec. 2. Sections (1) and (2), Article 12.211, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, are amended to read as follows:

"(1) In addition to the franchise tax due and payable under Article 12.01 of this Chapter, there is hereby levied on all corporations paying a franchise tax under the provisions of Article 12.01 of this Chapter an additional franchise tax for the privilege of doing business in Texas in corporate form from and after May 1, 1972, which additional franchise tax shall be computed by multiplying the tax due and payable under Article 12.01,

except Section (1)(a)(ii), of this Chapter for the aforesaid periods by 27.27 percent.

"(2) Corporations eligible to and electing to compute the franchise tax for which they are liable under the provisions of Article 12.19 of this Chapter shall, for the privilege of doing business in Texas in corporate form from and after May 1, 1972, pay an additional franchise tax in accordance with the following schedule:

"If Total Assets Are at Least	But Less Than	The Tax Shall Be
\$ 0.00	\$ 15,000.00	\$ 5.00
15,000.00	20,000.00	10.00
20,000.00	25,000.00	10.00
25,000.00	30,000.00	15.00
30,000.00	40,000.00	15.00
40,000.00	50,000.00	20.00
50,000.00	60,000.00	25.00
60,000.00	70,000.00	35.00
70,000.00	80,000.00	40.00
80,000.00	90,000.00	45.00
90,000.00	100,000.00	50.00
100,000.00	110,000.00	55.00
110,000.00	120,000.00	60.00
120,000.00	130,000.00	60.00
130,000.00	140,000.00	65.00
140,000.00	150,000.00	70.00"

Article 8.

Section 1. This Act takes effect on July 1, 1971, on the condition that it is passed by a vote of at least two-thirds of all the Members elected to each House as required by Section 39, Article III, Constitution of the State of Texas. Otherwise, this Act takes effect on September 1, 1971.

Sec. 2. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 3. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force as provided by Section 2 of this article, and it is so enacted.

The House proceeded to the consideration of Article 1 of Committee Amendment No. 1 to HB 730.

(Speaker in the Chair)

There being no amendments offered to Article 1, the House proceeded to the consideration of Article 2 of Committee Amendment No. 1.

There being no amendments offered to Article 2, the House proceeded to the consideration of Article 3 of Committee Amendment No. 1.

There being no amendments offered to Article 3, the House proceeded to the consideration of Article 4 of Committee Amendment No. 1.

Mr. Cruz offered the following amendment to Article 4 of Committee Amendment No. 1:

Amend Article 4, Section 1, of Committee Amendment No. 1 to HB 730, as follows:

at line 33 of page 5 of said committee amendment delete "10" and substitute "2" therefor.

The amendment was adopted without objection.

There being no further amendments offered to Article 4, the House proceeded to the consideration of Article 5 of Committee Amendment No. 1.

Mr. Cole offered the following amendment to Article 5 of Committee Amendment No. 1:

Amend Article 5 of HB 730 Second Printing by inserting the words "automobile racing" on line 11.

The amendment was adopted.

RECESS

Mr. Carl Parker moved that the House recess until 1:30 p.m. today.

The motion prevailed without objection.

The House accordingly, at 12:05 p.m., recessed until 1:30 p.m. today.

AFTERNOON SESSION

The House met at 1:30 p.m. and was called to order by the Speaker.

HB 730 ON PASSAGE TO ENGROSSMENT

The House continued the consideration of Article 5 of Committee Amendment No. 1 to HB 730.

Mr. McAlister offered the following amendment to Article 5 of Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 as follows:

(1) Strike the phrase "skating rinks open to skating by patrons" in lines 9 and 10 and in lines 44 and 45 of page 9 of the amendment.

(2) On line 30 of page 9 of the amendment, following the word "rodeo," insert the phrase, "or to skating rinks open to skating by patrons."

(3) On line 12, page 10 of the amendment, after the word "contributions," add the phrase, "or to skating rinks open to skating by patrons."

Mr. Atwell moved to table the above amendment offered by Mr. McAlister.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—102

Adams	Finney	Kilpatrick	Salter
Allen, Joe	Floyd	Kost	Sanchez
Allen, John	Foreman	Lemmon	Santiesteban
Allred	Gammage	Lombardino	Schulle
Angly	Garcia	Lovell	Semos
Atwell	Golman	McKissack	Shannon
Atwood	Grant	Moncrief	Sherman
Baker	Hale	Moore, A.	Short
Bass, T.	Hanna, Joe	Moore, G.	Slack
Bigham	Hannah, John	Moore, T.	Slider
Blanton	Harding	Moreno	Smith
Braecklein	Harris	Murray	Solomon
Braun	Hawn	Nabers	Stewart
Burgess	Haynes	Nelms	Swanson
Calhoun	Head	Neugent, D.	Traeger
Carrillo	Heatly	Newton	Tupper
Cavness	Hilliard	Niland	Uher
Clayton	Holmes, T.	Nugent, J.	Von Dohlen
Cobb	Howard	Orr	Ward
Cruz	Hubenak	Parker, C.	Wayne
Daniel	Hull	Parker, W.	Wieting
Davis, H.	Ingram	Poerner	Williams
Doran	Johnson	Poff	Wolff
Doyle	Jones, D.	Presnal	Wyatt
Dramberger	Jones, G.	Reed	
Farenthold	Jungmichel	Salem	

Nays—36

Agnich	Cole	Jones, E.	Price
Bass, B.	Craddick	Kaster	Rodriguez
Beckham	Denton	Kubiak	Rosson
Blythe	Earthman	Lee	Silber
Bowers	Finck	Lewis	Simmons
Caldwell	Finnell	McAlister	Spurlock
Cates	Hawkins	Mengden	Tarbox
Christian	Hendricks	Nichols	Truan
Clark	Holmes, Z.	Pickens	Williamson

Absent

Bynum	Graves	Longoria	Patterson
Davis, D.	Ligarde	Ogg	Vale

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

Mr. Cole offered the following amendment to Article 5 of Committee Amendment No. 1:

Amend HB 730, Second Printing, by changing the words "but not" to "and" on line 27 page 7.

The amendment was adopted without objection.

There being no further amendments offered to Article 5, the House proceeded to the consideration of Article 6.

There being no amendments offered to Article 6, the House proceeded to the consideration of Article 7.

Mr. Atwell offered the following amendment to Article 7 of Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730, Second Printing, by striking "1973" on line 13, page 17, and substituting "1972."

The amendment was adopted without objection.

Mr. Traeger offered the following amendment to Article 7 of Committee Amendment No. 1:

Add on page 18 of Second Printing of HB 730 substituting for:

Line 19 150,000.00—200,000 75.00
Line 20 200,000.00—500,000 100.00

Renumbering all subsequent lines.

Mr. Atwell moved to table the above amendment offered by Mr. Traeger.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—78

Atwell	Floyd	Lee	Santiesteban
Beckham	Foreman	Lemmon	Schulle
Bigham	Garcia	Longoria	Semos
Blanton	Golman	Lovell	Shannon
Blythe	Hanna, Joe	McAlister	Sherman
Bowers	Hannah, John	McKissack	Short
Braecklein	Hawn	Mengden	Slack
Burgess	Haynes	Moncrief	Slider
Caldwell	Heatly	Moore, A.	Smith
Calhoun	Hendricks	Moore, G.	Solomon
Carrillo	Holmes, T.	Moore, T.	Stewart
Cates	Howard	Murray	Swanson
Cavness	Hull	Ogg	Tarbox
Clayton	Ingram	Orr	Tupper
Cobb	Johnson	Parker, C.	Uher
Craddick	Jones, D.	Parker, W.	Ward
Cruz	Jones, E.	Patterson	Wayne
Daniel	Jungmichel	Pickens	Wieting
Davis, D.	Kilpatrick	Price	
Earthman	Kost	Sanchez	

Nays—62

Adams	Doyle	Kaster	Rosson
Agnich	Dramberger	Kubiak	Salem
Allen, Joe	Farenthold	Lewis	Salter
Allen, John	Finck	Lombardino	Silber
Allred	Finnell	Moreno	Simmons
Angly	Gammage	Nabers	Spurlock
Atwood	Grant	Nelms	Traeger
Baker	Hale	Neugent, D.	Truan
Bass, B.	Harding	Newton	Vale
Bass, T.	Harris	Nichols	Von Dohlen
Braun	Hawkins	Niland	Williams
Christian	Head	Nugent, J.	Williamson
Clark	Hilliard	Poerner	Wolff
Cole	Holmes, Z.	Presnal	Wyatt
Davis, H.	Hubenak	Reed	
Denton	Jones, G.	Rodriguez	

Absent

Bynum	Finney	Ligarde	Poff
Doran	Graves		

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

Mr. Tom Moore offered the following amendment to Article 7 of Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by amending Article 7 to read as follows:

Article 7
Article 1—Short Title and Definitions

Section 1—Short Title

This Act shall be known and may be cited as the "Texas Corporate Profits Tax Act."

Section 2—Definitions.

The provisions of Articles 10, 11, 12, 14, 22, and 23, Revised Civil Statutes of Texas, 1925, and of Chapter 359, Acts 50th Legislature, 1947, on the interpretation of Statutes, shall apply to this Act. The following definitions shall apply throughout this part, except as the context may otherwise require:

1. Comptroller. "Comptroller" shall mean the Comptroller of the State of Texas.

2. Corporation. "Corporation" means any business entity subject to income taxation as a corporation under the laws of the United States, excepting corporations having an election in effect under subchapter S of the Internal Revenue Code.

3. Taxable Corporation. "Taxable corporation" means, for any taxable year, a corporation which, at any time during that taxable year received any income allocable or apportionable to this state under Art. 3. In the case of affiliated corporations under the United States Internal Revenue Code Section 1504(a), which file their federal returns on a consolidated basis as a group, and if the group elects to file as a group for purposes of this Act, the group shall be deemed to be the taxable corporation.

4. Fiscal year. "Fiscal year" means an accounting period of 12 months ending on the last day of any month other than December.

5. Taxable year. "Taxable year" means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which the base income is computed under this Act. "Taxable year" means, in the case of a return made for a fractional part of a year under the provisions of this Act, the period for which such return is made.

6. Taxpayer. "Taxpayer" means any corporation subject to the tax imposed by this Act.

7. Internal Revenue Code. "Internal Revenue Code" means the United States Internal Revenue Code of 1954, as amended, and existing on January 1, 1971.

8. State. "State" when applied to a jurisdiction other than this state means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any Territory or Possession of the United States, and any foreign country, or any political subdivision of any of the foregoing.

9. Regulations. "Regulations" includes rules promulgated and forms prescribed by the Comptroller.

10. Tax or tax liability. "Tax" or "tax liability" is the liability for all amounts owing by a taxpayer to the State of Texas under this Act.

11. Net income. "Net income" means that portion of a taxpayer's base income which is allocable to this state under the provisions of Article 3 for a taxable year.

12. Meaning of terms. Any "terms" used in this part shall have the same meaning as when used in a comparable context in the laws of the United States relating to federal corporate income taxes, unless a different meaning is clearly required.

Article 2—Tax Imposed

Section 1-(a) In general. A tax measured by net income is imposed on every corporation for each taxable year beginning after September 31, 1971, on the privilege of earning or receiving income in this state. Such tax shall be in addition to all other occupation or privilege taxes imposed by this state or any political subdivision thereof.

(b) Associations taxable as corporations. An association, trust, or other unincorporated organization which is taxable as a corporation for federal income tax purposes shall be subject to tax under this Act.

Section 2-Rate. A tax is hereby imposed upon the entire taxable income of every "Taxable Corporation" as follows:

4.5% of the net profits of corporations subject to the provisions of this Act.

Article 3—Allocation and
Apportionment of Income

Section 1-Definitions. As used in this Article, unless the context otherwise requires:

(a). "Business income" means income arising from transactions and activity in the regular course of the taxpayer's trade or business and includes income from tangible and intangible property if the acquisition, management, and disposition of the property constitutes integral parts of the taxpayer's regular trade or business operations.

(b). "Commercial domicile" means the principal place from which the trade or business of the taxpayer is directed or managed.

(c). "Compensation" means wages, salaries, commissions, and any other form of remuneration paid to employees for personal services.

(d). "Nonbusiness income" means all income other than business income.

(e). "Sales" means all gross receipts of the taxpayer not allocated under Section 2 (c-g) of this Article.

Section 2-General.

(a). Any corporate taxpayer having income from business activity which is taxable both within and without this state shall allocate and apportion its net income as provided in this section. Any corporate taxpayer having income solely from business activity taxable within this state shall allocate or apportion its entire net income to this state.

(b). For purposes of allocation and apportionment of income under this section, a corporate taxpayer is taxable in another state if in that state it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether in fact, the state does or does not.

(c). Rents and royalties from real or tangible personal property, capital gains, interest, dividends or patent or copyright royalties, to the extent that they constitute nonbusiness income, shall be allocated as provided in subsections d-g.

(d). Rents and Royalties:

i. Net rents and royalties from real property located in this state are allocable to this state.

ii. Net rents and royalties from tangible personal property are allocable to this state: (i) if and to the extent that the property is utilized in this state, or (ii) in their entirety if the taxpayer's commercial domicile is in

this state and the taxpayer is not organized under the laws of, or taxable in the state in which the property is utilized.

iii. The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

(e). Capital gains and losses:

i. Capital gains and losses from sales of real property located in this state are allocable to this state.

ii. Capital gains and losses from sales of tangible personal property are allocable to this state if: (i) the property had a situs in this state at the time of the sale, or (ii) the taxpayer's commercial domicile is in the state in which the property had a situs.

iii. Capital gains and losses from sales of intangible personal property are allocable to this state if taxpayer's commercial domicile is in this state.

(f). Interest and dividends are allocable to this state if the taxpayer's commercial domicile is in this state.

(g). Patent and copyright royalties:

i. Patent and copyright royalties are allocable to this state:

A. If and to the extent that the patent or copyright is utilized by the payer in this state, or

B. If and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer's commercial domicile is in this state.

ii. A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing or other processing in the state or to the extent that a patented product is produced in the state. If the basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in the state in which the taxpayer's commercial domicile is located.

iii. A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in the state in which the taxpayer's commercial domicile is located.

(h). All business income shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is 3.

(i). The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned and used during the tax period.

(j). Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at 8 times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from subrentals.

(k). The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Comptroller may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

(l). The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

(m). Compensation is paid in this state if:

- i. The individual's service is performed entirely within the state; or
- ii. The individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or
- iii. Some of the service is performed in the state and base of operations or, if there is no base of operations, the place from which the service is directed or controlled is in the state, or the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(n). The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

(o). Sales of tangible personal property are in this state if:

- i. The property is delivered or shipped to a purchaser, other than the United States Government, within this state regardless of the f.o.b. point or other conditions of the sale; or
- ii. The property is shipped from an office, store, warehouse, factory or other place of storage in this state and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser.

(p). Sales, other than sales of tangible personal property, are in this state if:

- i. The income-producing activity is performed in this state; or

ii. The income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than in any other state, based on costs of performance.

(q). Insurance companies:

i. Except as otherwise provided by paragraph (ii), business income of an insurance company doing business as a corporation in this state for a taxable year shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the direct premiums written for insurance upon property or risk in this state, and the denominator of which is the direct premiums written for insurance upon property or risk everywhere. For purposes of this subsection, the term "direct premium written" means the total amount of direct premiums written, assessments and annuity considerations as reported for the taxable year on the annual statement filed by the company with the Texas State Board of Insurance.

ii. If the principal source of premiums written by an insurance company consists of premiums for reinsurance accepted by it, the business income of such company shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the sum of (1) direct premiums written for insurance upon property or risk in this state, plus (2) premiums written for reinsurance accepted in respect of property or risk in this state, and the denominator of which is the sum of (3) direct premiums written for insurance upon property or risk everywhere, plus (4) premiums written for reinsurance accepted in respect of property or risk everywhere. For purposes of this paragraph, premiums written for reinsurance accepted in respect of property or risk in this state, whether or not otherwise determinable, may, at the election of the company, be determined on the basis of the proportion which premiums written for reinsurance accepted from companies commercially domiciled in Texas bears to premiums written for reinsurance accepted from all sources, or, alternatively, in the proportion which the sum of the direct premiums written for insurance upon property or risk in this state by each ceding company from which reinsurance is accepted bears to the sum of the total direct premiums written by such ceding company for the taxable year.

(r). Business income of a financial organization shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is its business income from sources within this state, and the denominator of which is its business income from all sources. For the purposes of this subsection, the business income of a financial organization from sources within this state is the sum of:

i. Fees, commissions, or other compensation for financial services rendered within this state;

ii. Gross profits from trading in stocks, bonds or other securities managed within this state;

iii. Interest and dividends received within this state;

iv. Interest charged to customers at places of business maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

v. Any other gross income resulting from the operation as a financial organization within this state. In computing the amounts referred to in paragraphs (i) through (v) of this subsection, any amount received by a member of an affiliated group (determined under Section 1504(a) of the Internal Revenue Code but without reference to whether any such corporation is an "includible corporation" under Section 1504(b) of the Internal Revenue Code) from another member of such group shall be included only to the extent such amount exceeds expenses of the recipient directly related thereto.

(s). Transportation services. A corporation whose business income is wholly or partly derived from furnishing transportation services shall have its income apportioned to this state in accordance with paragraph (i) and (ii):

i. Such business income (other than that derived from transportation by pipelines) shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the revenue miles of the corporation in this state, and the denominator of which is the revenue miles of the corporation everywhere. For purposes of this paragraph, a revenue mile is the transportation of 1 passenger or 1 net ton of freight the distance of 1 mile for a consideration. Where a corporation is engaged in the transportation of both passengers and freight, the fraction above referred to shall be determined by means of an average of the passenger revenue mile fraction and the freight revenue mile fraction, weighted to reflect the corporation's

A. relative railway operating income from total passenger and total freight service, as reported to the Interstate Commerce Commission, in the case of transportation by railroad, and

B. relative gross receipts from passenger and freight transportation other than by railroad.

ii. Such business income derived from transportation by pipeline shall be apportioned to this state by multiplying such income by a fraction, the numerator of which is the revenue miles of the corporation in this state, and the denominator of which is the revenue miles of the corporation everywhere. For the purposes of this paragraph, a revenue mile is the transportation by pipeline of 1 barrel of oil, 1,000 cubic feet of gas, or of any specified quantity of any other substance, the distance of 1 mile for a consideration.

(t). If the allocation and apportionment provisions of this section do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for, or the Comptroller may require, in respect to all or any part of the taxpayer's business activity, if responsible:

i. Separate accounting;

ii. The exclusion of any one or more of the factors;

iii. The inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

iv. The employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's income.

Article 4—Records, Returns, and Notices

Section 1—Notice on Regulations Requiring Records, Statements and Special Returns

Every corporation liable for any tax imposed by this Act shall keep such records, render such statements, make such returns and notices, and comply with such rules and regulations as the Comptroller may from time to time prescribe. Whenever in the judgment of the Comptroller it is necessary, he may require any corporation, by notice served upon such corporation or by regulations, to make such records, as the Comptroller deems sufficient to show whether or not such person is liable for tax under this Act.

Section 2(a)—In general, a return with respect to the tax imposed by this Act shall be made by every corporation for every taxable year in which the corporation, which is qualified to do business in this state, is required to make a federal income tax return, regardless of whether such person is liable for the tax imposed by this Act.

(b)—Receivers, trustees and assignees for corporations. In a case where a receiver, trustee in bankruptcy, or assignee, by order of a court of competent jurisdiction, by operation of law, or otherwise, has possession of or holds title to all or substantially all the property or business of a corporation, whether or not such property or business is being operated, such receiver, trustee, or assignee shall make the returns and notices required of such corporation in the same manner and form as corporations are required to make such returns and notices.

Section 3—Signing of Returns and Notices

(a). A return or notice required of a corporation shall be signed by the president, vice-president, treasurer or any other officer duly authorized to do so to act. In the case of a return or notice made for a corporation by a fiduciary pursuant to the provisions of Article 3, Section 2(b), such fiduciary shall sign such document. The fact that an individual's name is signed to a return or notice shall be prima facie evidence that such individual is authorized to sign such document on behalf of the corporation.

Section 4—Verification

Each return or notice required to be filed under this Act shall contain or be verified by a written declaration that it is made under the penalties of perjury.

Section 5—Time and Place for Filing Returns and Paying Tax.

(a). The income tax return by this part shall be filed on or before the date a federal income tax return (without regard to extension) is due to be filed. A taxpayer required to make and file a return under this part shall, without assessment, notice or demand, pay any tax due thereon to the Comptroller on or before the date fixed for filing such return (determined without regard to any extension of time for filing the return). The Comptroller shall prescribe by regulation the place for filing any return, declaration, statement or other document required pursuant to this part and for the payment of any tax.

(b). The fiscal year of 1971 for the purposes of this Act shall consist of the period of October 1 to December 31. The return for 1971 shall be filed by or on April 15, 1972, as provided for in Section 5(a) of this Act.

(c). Extension of time for filing federal return. When the taxpayer has been granted an extension or extensions of time within which to file his federal income tax return for any taxable year, the filing of a copy of such extension or extensions with the Comptroller shall automatically extend the due date of the return with respect to the tax imposed by this Act for an equivalent period if the requirements of Article 3, Section 5(c) are met.

(d). Tentative payments.

i. In general. In connection with any extension provided under Section 5(c), Article 3, of the time for filing a return, the taxpayer shall file a tentative tax return and pay, on or before the date prescribed by law for the filing of such return (determined without regard to any extensions of time for such filing), the amount properly estimated as his tax for the taxable year.

ii. Interest. Interest on any amount of tax due and unpaid for the period of any extension shall be payable as provided in Article 7, Section 14.

Article 5—Declaration and Payment of Estimated Tax

Section 1—Declaration of Estimated Tax

(a) In general. Every taxpayer shall make a declaration of estimated tax for the taxable year, in such form as the Comptroller shall prescribe, if the amount payable as estimated tax can reasonably be expected to be more than \$50.

(b). Estimated tax defined. The term "estimated tax" means the excess of:

i. The amount which the taxpayer estimates to be his tax under this Act for the taxable year, over

ii. The amount which he estimates to be the sum of any amounts to be withheld on account of or credited against such tax.

(c). Amended declaration. A taxpayer may amend a declaration under regulations prescribed by the Comptroller.

(d). Short taxable year. A taxpayer having a taxable year of less than 12 months shall make a declaration under regulations prescribed by the Comptroller.

Section 2—Time for Filing Declaration

(a). In general. A declaration of estimated tax required of a taxpayer who files his return under this Act on the basis of the calendar year shall be filed on or before April 15 of such year.

(b). Short taxable years. The application of this section to a taxable year

of less than 12 months shall be in accordance with regulations prescribed by the Comptroller.

Section 3—Payment of Estimated Tax

(a). In general. A taxpayer required to file a declaration of estimated tax pursuant to section 1 of this Article shall pay such estimated tax as follows:

i. The estimated tax shall be paid in 4 equal installments. The first installment shall be paid at the time of the filing of the declaration, the second and third on June 15 and September 15, respectively, of the taxable year, and the fourth on December 15 of the taxable year.

(b). Application to short taxable years. The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Department.

(c). Fiscal years. In the application of this section to the case of a taxable year beginning on any date other than January 1, there shall be substituted, for the months specified in subsection (a), the months which correspond thereto as determined by the Comptroller.

(d). Installments paid in advance. An installment of estimated tax may be paid before the date prescribed for its payment.

Section 4—Failure to Pay Estimated Tax

(a). In general. In case of any underpayment of estimated tax by a taxpayer, except as provided in subsection (d), the taxpayer shall be liable to a penalty in an amount determined at the rate of 10% per annum upon the amount of the underpayment (determined under subsection (b)) for the period of the underpayment (determined under subsection (c)).

(b). Amount of underpayment. For the purposes of subsection (a), the amount of underpayment shall be the excess of:

i. The amount of the installment which would be required to be paid if the estimated tax were equal to 80% of the tax shown on the return for the taxable year or, if no return was filed, 80% of the tax for such year, over,

ii. The amount, if any, of the installment paid on or before the last date prescribed for payment.

(c). Period of underpayment. The period of underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier:

i. The 15th day of the fourth month following the close of the taxable year; or

ii. With respect to any portion of the underpayment, the date on which such portion is paid. For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the

amount of the installment determined under subsection (b)(i) for such installment date.

(d). Exception. Notwithstanding the provisions of the preceding subsections, the penalty for underpayment of any installment shall not be imposed if the total amount of all payments of estimated tax made on or before the last date prescribed for the payment of such installment equals or exceeds the amount which would have been required to be paid on or before such date if the estimated tax were whichever of the following is the lesser:

i. An amount equal to the tax computed at the rates applicable to the taxable year but otherwise on the basis of the facts shown on the return of the corporation for, and the law applicable to, the preceding taxable year.

ii. A. An amount equal to 80% of the tax for the taxable year computed by placing on an annualized basis the net income:

(1). For the first 3 months of the taxable year, in the case of an installment required to be paid in the first 4 months;

(2). For the first 3 months or for the first 5 months of the taxable year, in the case of an installment required to be paid in the sixth month;

(3). For the first 6 months or for the first 8 months of the taxable year, in the case of an installment required to be paid in the ninth month; and

(4). For the first 9 months or for the first 11 months of the taxable year, in the case of an installment required to be paid in the twelfth month of the taxable year.

B. For purposes of this paragraph, the net income shall be placed on an annualized basis by:

(1). Multiply by 12 the net income referred to in subparagraph (A); and

(2). Dividing the resulting amount by the number of months in the taxable year (3, 5, 6, 8, 9, or 11, as the case may be) referred to in subparagraph (A).

(e). Short taxable year. The application of this section to taxable years of less than 12 months shall be in accordance with regulations prescribed by the Comptroller.

(f). Taxable years beginning before October 1, 1970. For purposes of applying the provisions of this section with respect to the penalty for underpayment of estimated tax, paragraphs (1), (2) and (6) of subsection (d) shall not apply with respect to any taxable year beginning before October 1, 1971.

Section 5—Declaration as Return

The provisions of sections relating to returns and notices shall be applicable (except where manifestly inconsistent herewith) with respect to declarations of estimated tax required to be filed under this Article.

Article 6—Accounting Periods and Methods of Accounting**Section 1—Period for Computation of Taxable Income**

(a). General. For purposes of the tax imposed by this part, a taxpayer's taxable year shall be the same as his taxable year for federal income tax purposes.

(b). Change of taxable year. If a taxpayer's taxable year is changed for federal income tax purposes, his taxable year for purposes of the tax imposed by this part shall be similarly changed. If a change in taxable year results in a taxable period of less than 12 months, taxable income, the standard deduction and the deduction for personal exemption, if applicable, allowed by this part may be prorated under regulations prescribed by the Comptroller.

(c). Termination of taxable year for jeopardy. Notwithstanding the provisions of subsections 1 and 2, if the Comptroller terminates the taxpayer's taxable year relating to tax in jeopardy, the tax shall be computed for the period determined by such action.

Section 2—Methods of Accounting

(a). Same as federal. For purposes of the tax imposed by this part, a taxpayer's method of accounting shall be the same as his method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, taxable income for purposes of this part shall be computed under such method that in the opinion of the Comptroller fairly reflects income.

(b). Change of accounting methods. If a taxpayer's method of accounting is changed for federal income tax purposes, his method of accounting for purposes of this part shall similarly be changed.

Section 3—Adjustments

In computing a taxpayer's taxable income for any taxable year under a method of accounting different from the method under which the taxpayer's taxable income for the previous year was computed, there shall be taken into account those adjustments which are determined, under regulations prescribed by the Comptroller, to be necessary solely by reason of the change in order to prevent amounts from being duplicated or omitted.

Section 4—Limitation on Additional Tax

(a). Change other than to installment method. If a taxpayer's method of accounting is changed, other than from an accrual to an installment method, any additional tax which results from adjustments determined to be necessary solely by reason of the change shall not be greater than if such adjustment were ratably allocated and included for the taxable year of the change and the preceding taxable years, not in excess of two, during which the taxpayer used the method of accounting from which the change is made.

(b). Change from accrual to installment method. If a taxpayer's method of accounting is changed from an accrual to an installment method, any

additional tax for the year of such change of method and for any subsequent year which is attributable to the receipt of installment payments properly accrued in a prior year, shall be reduced by the portion of tax for any prior taxable year attributable to the accrual of such installment payments, under regulations prescribed by the Comptroller.

Article 7—Procedure and Administration

Section 1—Examination of Return

(a). Deficiency or overpayment. As soon as practical after the return is filed, the Comptroller shall examine it to determine the correct amount of tax. If the Comptroller finds that the tax paid is less than the correct amount, he shall notify the taxpayer of the amount of the deficiency proposed to be assessed. If the comptroller finds that the tax paid is more than the correct amount, he shall credit the overpayment against any taxes due under this part by the taxpayer and refund the difference.

(b). No return filed. If the taxpayer fails to file an income tax return, the Comptroller shall estimate the taxpayer's taxable income and the tax thereon from any available information and notify the taxpayer of the amount proposed to be assessed as in the case of a deficiency.

(c). Notice of deficiency. A notice of deficiency shall set forth the reason for the proposed assessment. The notice may be mailed by certified or registered mail to the taxpayer at his last known address.

Section 2—Assessment Final if No Protest

Thirty days after the date on which it was mailed, 60 days if the taxpayer is outside the United States, a notice of proposed assessment of a deficiency shall constitute a final assessment of the amount of tax specified together with interest, additions to tax and penalties except only for such amounts as to which the taxpayer has filed a protest with the Comptroller.

Section 3—Protest by Taxpayer

Within 30 days, 60 days if the taxpayer is outside the United States, after the mailing of a deficiency notice, the taxpayer may file with the comptroller written protest against the proposed assessment in which he shall set forth the grounds on which the protest is based. If a protest is filed, the Comptroller shall reconsider the assessment of the deficiency and, if the taxpayer has so requested, shall grant the taxpayer or his authorized representatives an oral hearing.

Section 4—Notice of Determination After Protest

Notice of the Comptroller's determination shall be mailed to the taxpayer by certified or registered mail and such notice shall set forth briefly the Comptroller's findings of fact and the basis of decision in each case decided in whole or in part adversely to the taxpayer.

Section 5—Action of Comptroller

The action of the Comptroller on the taxpayer's protest is final upon the expiration of 90 days from the date when he mails notice of his action to

the taxpayer unless within this period the taxpayer seeks judicial review of the Comptroller's determination.

Section 6—Burden of Proof in Proceedings Before the Comptroller

In any proceeding before the Comptroller under this part the burden of proof shall be on the taxpayer except for the following issue, as to which the burden of proof shall be on the Comptroller:

(a) Whether the taxpayer has been guilty of fraud with attempt to evade tax.

(b) Whether the petitioner is liable as the transferee of property of a taxpayer, but not to show that the taxpayer was liable for the tax.

(c) Whether the taxpayer is liable for any increase in a deficiency where such increase is asserted initially after the notice of deficiency was mailed and a protest under Section 3 of this Act filed, unless such increase in deficiency is the result of a change or correction of federal taxable income required to be reported under Art. 3, Section 5(d), and of which change or correction the Comptroller had no notice at the time he mailed the notice of deficiency.

Section 7—Evidence of Related Federal Determination

Evidence of a federal determination relating to issues raised in a proceeding under Section 3 of this Article shall be admissible, under rules established by the Comptroller.

Section 8—Mathematical Error

In the event that the amount of tax is understated on the taxpayer's return due to a mathematical error, the Comptroller shall notify the taxpayer that an amount of tax in excess of that shown on the return is due and has been assessed. Such a notice of additional tax due shall not be considered a notice of a deficiency assessment nor shall the taxpayer have any right of protest or appeal as in the case of a deficiency assessment based on such notice, and the assessment and collection of the amount of tax erroneously omitted in the return is not prohibited by any provision of this part.

Section 9—Waiver of Restriction

The taxpayer at any time, whether or not a notice of deficiency has been issued, shall have the right to waive the restrictions on assessment and collection of the whole or any part of the deficiency by a signed notice in writing filed with the Comptroller.

Section 10—Assessment of Tax

(a). Date of assessment. The amount of tax which is shown to be due on the return, including revisions for mathematical errors, shall be deemed to be assessed on the date of filing of the return including any amended returns showing an increase of tax. In the case of a return properly filed without the computation of the tax, the tax computed by the Comptroller shall be deemed to be assessed on the date when payment is due. If a notice

of deficiency has been mailed, the amount of the deficiency shall be deemed to be assessed on the date provided in Section 2 of this Article if no protest is filed; or if a protest is filed then upon the date when the determination of the Comptroller becomes final. If an amended return or report filed pursuant to Article 3, Section 5(d) concedes the accuracy of a federal change or correction, any deficiency in tax under this part resulting therefrom shall be deemed to be assessed on the date of filing such report or amended return and such assessment shall be timely notwithstanding any other provisions of this part. Any amount paid as a tax or in respect of a tax, other than amounts withheld at the source or paid as estimated income tax, shall be deemed to be assessed upon the date of receipt of payment, notwithstanding any other provision of this part.

(b). Other assessment powers. If the mode or time of the assessment of any tax under this part, including interest, additions to tax and penalties is not otherwise provided for, the Comptroller may establish the same by regulation.

(c). Supplemental assessment. The Comptroller may, at any time within the period prescribed for assessment, make supplemental assessment, subject to the provision of section 1 of this Article where applicable, whenever it is found that any assessment is imperfect or incomplete in any material aspect.

(d). Cross reference. For assessment in cases of jeopardy, see Section 11.

Section 11—Limitations on Assessment

(a). General. Except as otherwise provided in this Act, a notice of a proposed deficiency assessment shall be mailed to the taxpayer within 3 years after the return was filed. No deficiency shall be assessed or collected with respect to the year for which the return was filed unless the notice is mailed within the 3-year period or the period otherwise fixed.

(b). Omission of more than 25% of income. If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25% of the amount of gross income stated in the return, a notice of a proposed deficiency assessment may be mailed to the taxpayer within 6 years after the return was filed. For purposes of this subsection, there shall not be taken into account any amount which is omitted in the return if such an amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Comptroller of the nature and amount of such item.

(c). No return filed or fraudulent return. If no return is filed or a false and fraudulent return is filed with intent to evade the tax imposed by this part, a notice of deficiency may be mailed to the taxpayer at any time.

(d). Failure to report federal change. If a taxpayer fails to comply with the requirement of Article 3, Section 5(d) by not reporting a change or correction increasing his federal taxable income, or in not reporting a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, or in not filing an amended return, a notice of deficiency may be mailed to the taxpayer at any time.

(e). Report of federal change or correction. If the taxpayer shall pursuant to Article 3, Section 5(d), report a change or correction or file an

amended return increasing his federal taxable income or report a change or correction which is treated in the same manner as if it were a deficiency for federal income tax purposes, the assessment, if not deemed to have been made upon the filing of the report of amended return, may be made at any time within two years after such report or amended return was filed.

(f). Extension by agreement. Where, before the expiration of the time prescribed in this section for the assessment of a deficiency, both the Comptroller and the taxpayer shall have consented in writing to its assessment after such time, the deficiency may be assessed at any time prior to the expiration of period agreed upon. The period so agreed may be extended by subsequent agreement in writing made before the expiration of the period previously agreed upon.

(g). Time return deemed filed. For purposes of this section an income tax return filed before the last day prescribed by law or by regulation promulgated pursuant to law for the filing thereof, shall be deemed to be filed on such last day.

Section 12—Recovery of Erroneous Refund

An erroneous refund shall be considered an underpayment of tax on the date made, and an assessment of a deficiency arising out of an erroneous refund may be made at any time within 2 years from the making of the refund, except that the assessment may be made within 5 years from the making of the refund if it appears that any part of the refund was induced by fraud or the misrepresentation of a material fact.

Section 13—Interest on Underpayments

(a). General. If any amount of tax imposed by this part is not paid on or before the last date prescribed for payment, interest on such amount at the rate of $\frac{1}{2}\%$ per month shall be paid for the period from such last date to date paid. No interest shall be imposed if the amount due is less than one dollar nor shall this section apply to any failure to pay estimated income tax under Article 4, Section 4.

(b). Last date prescribed for payment. For purposes of this section, the last date prescribed for the payment of tax shall be determined without regard to any extension of time.

(c). Suspension of waiver of restrictions. If the taxpayer has filed a waiver of restrictions on the assessment of a deficiency and if notice and demand by the Comptroller for payment of such deficiency is not made within 30 days after the filing of such waiver, interest shall not be imposed on such deficiency for the period beginning immediately after such 30th day and ending with the date of notice and demand.

(d). Interest treated as tax. Interest prescribed under this section on any tax shall be paid on notice and demand and shall be assessed, collected and paid in the same manner as taxes.

(e). Interest on penalties, or additions to tax. Interest shall be imposed under this section in respect to any penalty, or addition to tax only if such penalty or addition to tax is not paid within 10 days of the notice and demand therefor, and in such case interest shall be imposed only

for the period from the date of the notice and demand to the date of payment.

(f). Payments made within 10 days after notice and demand. If notice and demand is made for the payment of any amount due under this part and if such amount is paid within 10 days after the date of such notice and demand, interest under this section on the amount so paid shall not be imposed for the period after the date of such notice and demand.

(g). Satisfaction by credits. If any portion of a tax is satisfied by credit of an overpayment, then no interest shall be imposed under this section on the portion of the tax so satisfied for any period during which if the credit had not been made, interest would have been allowable with respect to such overpayment.

(h). Interest on erroneous refund. Any portion of the tax imposed by this part or any interest, penalty or addition to tax which has been erroneously refunded and which is recoverable by the Comptroller shall bear interest at the rate of 6% per annum from the date of payment of the refund.

(i). Limitation on assessment and collection. Interest prescribed under this section may be assessed and collected at any time during the period within which the tax, penalty, or addition to tax to which such interest relates may be assessed and collected respectively.

Section 14—Failure to File Tax Returns

Failure to file tax return. In case of failure to file any return required under this part on the date prescribed therefor, determined with regard to any extension of time for filing, unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5% of the amount of such tax if the failure is not for more than one month, with an additional 5% for each additional month or fraction thereof during which such failure continues, not exceeding 25% in the aggregate. For purposes of this section, the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed upon the return.

Section 14—Failure to Pay Tax

(a). Deficiency due to negligence. If any part of a deficiency is due to negligence or intentional disregard of rules and regulations, but without intent to defraud, there shall be added to the tax an amount equal to 5% of the deficiency.

(b). Fraud. If any part of a deficiency is due to fraud, there shall be added to the tax an amount equal to 50% of the deficiency. This amount shall be in lieu of any amount determined under subsection (a).

(c). Additional penalty. Any taxpayer who with fraudulent intent shall fail to pay any tax, or to make, render, sign or certify any return or declaration of estimated tax, or to supply any information within the time required by or under this part, shall be liable to a penalty of not more than \$1,000 in addition to any other amounts required under this part, to be imposed, assessed and collected by the Comptroller.

(d). Additions treated as tax. The additions to tax and penalties provided by this part shall be paid upon notice and demand and shall be assessed, collected, and paid in the same manner as taxes and any reference in this part to income tax or the tax imposed by this part shall be deemed also to refer to additions to the tax, and penalties provided by this section. For purposes of the deficiency procedures provided in section 1, this subsection shall not apply to:

i. Any addition to tax under Section 13 except as to that portion attributable to a deficiency;

ii. Any additional penalty under subsection (c).

(e). Determination of deficiency. For purposes of subsections (a) and (b) related to deficiencies due to negligence or fraud, the amount shown as the tax by the taxpayer upon his return shall be taken into account in determining the amount of the deficiency only if such return were filed on or before the last day prescribed for the filing of such return, determined with regard to any extension of time for such filing.

(f). Taxpayer defined. For purposes of subsection (c) the term taxpayer includes a corporation or an officer or employee of any corporation, including a dissolved corporation, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs.

Section 15—Authority to make Credits or Refunds

(a). General rule. The Comptroller within the applicable period of limitations may credit an overpayment of income tax and interest on such overpayment against any liability in respect of any tax imposed under this Act on the taxpayer who made the overpayment, and the balance shall be refunded by the treasurer out of the proceeds of the tax retained by him for such general purposes.

(b). Credits against estimated tax. The Comptroller may prescribe regulations providing for the crediting against the estimated income tax for any taxable year of the amount determined to be an overpayment of the income tax for a preceding taxable year.

(c). Assessment and collection after limitation period. If any amount of income tax is assessed or collected after the expiration of the period of limitations properly applicable thereto, such amount shall be considered an overpayment.

Section 16—Abatements

(a). General rule. The Comptroller is authorized to abate the unpaid portion of the assessment of any tax or any liability in respect thereof, which

i. is excessive in amount, or

ii. is assessed after the expiration of the period of limitations properly applicable thereto, or

iii. is erroneously or illegally assessed.

(b). No claim by taxpayer. No claim for abatement shall be filed by a taxpayer in respect of an assessment of any tax imposed under this part.

(c). Small tax balances. The Comptroller is authorized to abate the unpaid portion of the assessment of any tax, or any liability in respect thereof, if he determines under uniform rules prescribed by him that the administration and collection costs involved would not warrant collection of the amount due.

Section 17—Limitations on Credit or Refund

(a). General. A claim for credit or refund of an overpayment of any tax imposed by this part shall be filed by the taxpayer within 3 years from the time the return was filed or 2 years from the time the tax was paid whichever of such periods expires the later; or if no return was filed by the taxpayer, within 2 years from the time the tax was paid. No credit or refund shall be allowed or made after the expiration of the period of limitation prescribed in this subsection for the filing of a claim for credit or refund, unless a claim for credit or refund is filed by the taxpayer within such period.

(b). Limit on amount of claim or refund. If the claim is filed by the taxpayer during the 3-year period prescribed in subsection (a), the amount of the credit or refund shall not exceed the portion of the tax paid within the 3 years immediately preceding the filing of the claim plus the period of any extension of time for filing the return. If the claim is not filed within such 3-year period, but is filed within the 2-year period, the amount of the credit or refund shall not exceed the portion of the tax paid during the 2 years immediately preceding the filing of the claim. If no claim is filed, the credit or refund shall not exceed the amount which would be allowable under either of the preceding sentences, as the case may be, if a claim was filed on the date the credit or refund is allowed.

(c). Extension of time by agreement. If an agreement for an extension of the period for assessment of income taxes is made within the period prescribed in subsection for the filing of a claim for credit or refund, the period for filing claim for credit or for making credit or refund if no claim is filed, shall not expire prior to 6 months after the expiration of the period within which an assessment may be made pursuant to the agreement or any extension thereof. The amount of such credit or refund shall not exceed the portion of the tax paid after the execution of the agreement and before the filing of the claim or the making of the credit or refund, as the case may be, plus the portion of the tax paid within the period which would be applicable under subsection (a) if a claim had been filed on the date the agreement was executed.

(d). Notice of change or correction of federal income. If a taxpayer is required by Article 3, Section 5(d) to report a change or correction in federal taxable income reported on his federal income tax return, or to report a change or correction which is treated in the same manner as if it were an overpayment for federal income tax purposes, or to file an amended return with the assessor, claim for credit or refund of any resulting overpayment of the tax shall be filed by the taxpayer within 2 years from the time the notice of such change or correction or such amended return was required to be filed with the Comptroller. If the report or amended return required by Article 3, Section 5(d) is not filed within the 90-day period therein specified, interest on any resulting refund or credit shall cease to

accrue after such 90th day. The amount of such credit or refund shall not exceed the amount of the reduction in tax attributable to such federal change, correction or items amended on the taxpayer's amended federal income tax return. This subsection shall not affect the time within which or the amount for which a claim for credit or refund may be filed apart from this subsection.

(e). Special rules. The following rules shall apply:

1. If the claim for credit or refund relates to an overpayment of tax on account of the deductibility by the taxpayer of a debt as a debt which became worthless or a loss from worthlessness of a security or the effect that the deductibility of a debt or of a loss has on the application to the taxpayer of a carry-over, the claim may be made, under regulations prescribed by the Comptroller, within 7 years from the date prescribed by law for filing the return for the year with respect to which the claim is made.

2. If the claim for credit or refund relates to an overpayment attributable to a net operating loss carry-back, the claim may be made, under regulations prescribed by the Comptroller, within the period which ends with the expiration of the 15th day of the 40th month following the end of the taxable year of the net operating loss which resulted in such carry-back or the period prescribed in subsection 3 in respect of such taxable year, whichever expires later.

Section 18—Interest on Overpayment

(a). General. Under regulations prescribed by the assessor, interest shall be allowed and paid at the rate of $\frac{1}{2}\%$ per month upon any overpayment in respect of the tax imposed by this Act. No interest shall be allowed or paid if the amount thereof is less than \$1.

(b). Date of return or payment. For purposes of this section:

1. Any return filed before the filing thereof shall be considered as filed on such last day determined without regard to any extension of time granted the taxpayer;

2. Any tax paid by the taxpayer before the last day prescribed for its payment, any income tax withheld from the taxpayer during any calendar year and any amount paid by the taxpayer as estimated income tax for a taxable year shall be deemed to have been paid by him on the last day prescribed for the paying thereof.

(c). Refund within 3 months. If any overpayment of tax imposed by this part is refunded within 3 months after the last date prescribed, or permitted by extension of time, for filing the return of such tax or within 3 months after the return was filed, whichever is later, no interest shall be allowed under this section on overpayment.

Section 19—Refund Claim

Every claim for refund shall be filed with the Comptroller in writing and shall state the specific grounds upon which it is founded. The Comptroller may grant the taxpayer or his authorized representatives an opportunity for an oral hearing if the taxpayer so requests.

Section 20—Notice of Denial

If the Comptroller disallows a claim for refund, he shall notify the taxpayer accordingly. The action of the Comptroller denying a claim for refund is final upon the expiration of 90 days from the date when he mails notice of his action to the taxpayer, unless within this period the taxpayer seeks judicial review of the Comptroller determination.

Section 21—Refund Claim Deemed Disallowed

If the Comptroller fails to mail a notice of action on any refund claim within 6 months after the claim is filed, the taxpayer may, prior to notice of action on the refund claim, consider the claim disallowed.

Article 8—Judicial Review**Section 1—Appeal**

A taxpayer may appeal a determination of the Comptroller concerning a notice of deficiency, an assessment of penalty or interest, or a claim for refund, to the District court of the county in which the taxpayer has a place of business or if he does not have a regular place of business in the state, to the District Court of Travis County. The appellant shall, when such appeal is taken, file an affidavit stating his reasons of appeal and serve a copy thereof on the Comptroller and in the hearing of the appeal shall be confined to the reasons of appeal set forth in such affidavit. Jurisdiction is granted to the District Court to hear and determine such appeals and to enter such orders and decrees as the nature of the case may require. The decision on all questions of fact shall be final. An appeal may be taken to the law court as in other actions. Decisions shall be certified forthwith by the clerk of courts to the Comptroller.

Section 2—Judicial Review Exclusive Remedy in Deficiency Proceedings

The review of a determination of the Comptroller provided by section 1 shall be the exclusive remedy available to any taxpayer for the judicial review of the action of the Comptroller in respect to the assessment of a proposed deficiency. No injunction or other legal or equitable process shall issue in any suit, action or proceeding in any court against this state or against any office of this state to prevent or enjoin the assessment or collection of any tax imposed under this part.

Section 3—Assessment Pending Review: Review Bond

The Comptroller may assess a deficiency after the expiration of the period specified in Article 6, Section 5 notwithstanding that an application for judicial review in respect of such deficiency has been made by the taxpayer, unless the taxpayer at or before the time his application for review is made, has paid the deficiency, or has deposited with the Comptroller the amount of the deficiency or has filed with the Comptroller a bond, in the amount of the deficiency being contested including interest and other amounts as well as all costs and charges which may accrue against him in the prosecution of the proceeding and issued by a person authorized under the laws of this state to act as surety, conditioned upon the payment of the deficiency including interest and other amounts as finally determined and such costs and charges.

Section 4—Proceedings after Review

(a). Credit refund or abatement. If the amount of a deficiency determined by the Comptroller is disallowed in whole or in part by the court of review, the amount so disallowed shall be credited or refunded to the taxpayer without the making of a claim therefor, or, if payment has not been made, shall be abated.

(b). Assessment final. An assessment of proposed deficiency by the Comptroller shall become final upon the expiration of the period specified in Article 6, Section 2 for filing a written protest against the proposed assessment if no such protest against the proposed assessment has been filed within the time provided; or if the protest provided in Article 6, Section 3 has been filed upon the expiration of time provided for filing an application for judicial review, or upon the final judgment of the reviewing court or upon the rendering by the Comptroller of a decision pursuant to the mandate of the reviewing court. Notwithstanding the foregoing, for the purpose of making an application for the review of a determination of the Comptroller, the determination shall be deemed final on the date the notice of decision is sent by certified mail or registered mail to the taxpayer as provided in Article 6, Section 4.

Section 5—No Suit Prior to Filing Claim

No suit shall be maintained for the recovery of any tax imposed by this part alleged to have been erroneously paid until a claim for refund has been filed with the Comptroller as provided in Article 6, Section 19 and the Comptroller has denied the refund or has failed to mail a notice of action on the claim within 6 months after the claim was filed.

Section 6—Limitation of Suit for Refund

The action authorized in Section 1 shall be filed within 3 years from the last date prescribed for filing the return or within one year from the date the tax was paid, or within 90 days after the denial of a claim for refund by the Comptroller or within 90 days after the refund claim has been deemed to be disallowed because of the failure of the Comptroller to mail a notice of action within 6 months after the claim was filed whichever period expires the later.

Section 7—Judgment for Taxpayer

In any action for a refund, the court may render judgment for the taxpayer for any part of the tax, interest penalties or other amounts found to be erroneously paid, together with interest on the amount of the overpayment. The amount of any judgment against the Comptroller shall first be credited against any taxes, interest, penalties or other amounts due from the taxpayer under the tax laws of this state and the remainder refunded by the Treasurer of State.

Article 9—Miscellaneous Enforcement Provisions

Section 1—Timely Mailing

If any claim, statement, notice, petition, or other document including, to the extent authorized by the Comptroller a return or declaration of estimated tax, required to be filed within a prescribed period or on or before

a prescribed date under the authority of any provision of this part is, after such period of such date, delivered by United States mail to the Comptroller, or the officer or person therein with which or with whom such document is required to be filed, the date of the United States postmark stamped on the envelope shall be deemed to be the date of delivery. This section shall apply only if the postmark date falls within the prescribed period or on or before the prescribed date for the filing of such document, determined with regard to any extension granted for such filing, and only if such document was deposited in the mail, postage prepaid, properly addressed to the Comptroller, office, officer or person therein with which or with whom the document is required to be filed. If any document is sent by United States registered mail, such registration shall be prima facie evidence that such document was delivered to the Comptroller or the office, officer or person to which or to whom it is addressed. To the extent that the Comptroller shall prescribe by regulation, certified mail may be used in lieu of registered mail under this section. This section shall apply in the case of postmarks not made by the United States Post Office only if and to the extent provided by regulations of the Comptroller. When the last day prescribed under the authority of this part, including any extension of time, for performing any act falls on Saturday, Sunday or a legal holiday in this state, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or a legal holiday.

Section 2—Collection Procedures

(a). General. The tax imposed by this part shall be collected by the Comptroller and he may establish the mode or time for the collection of any amount due under this part if not otherwise specified. The Comptroller shall, on request, give a receipt for any amount collected under this part. The Comptroller may authorize incorporated banks or trust companies which are depositaries or fiscal agents of this state to receive and give a receipt for any tax imposed under this part, in such manner, at such times, and under such conditions as he may prescribe; and the Comptroller shall prescribe the manner, times and conditions under which the receipt of tax by such banks and trust companies is to be treated as payment of tax to the Comptroller.

(b). Notice and demand. The Comptroller shall as soon as practicable give notice to each taxpayer liable for any amount of tax, addition to tax, additional amount, penalty or interest, which has been assessed but remains unpaid, stating the amount and demanding within 10 days of the date of the notice and demand payment thereof. Such notice shall be left at the usual place of business of such person or shall be sent by mail to the business's last known address. Except where the Comptroller determines that collection would be jeopardized by delay, if any tax is assessed prior to the last date, including any date fixed by extension, prescribed for payment of such tax, payment of such tax shall not be demanded until after such date.

(c). Cross reference. For requirements of payment without assessment, notice or demand of amount shown to be due on return, see Article 3, Section 5(a).

Section 3—Issuance of Warrant

If any taxpayer liable to pay any tax, addition to tax, penalty, or interest imposed under this part neglects or refuses to pay the same within 10

days after notice and demand, the Comptroller may issue a warrant directed to the sheriff of any county of this state commanding him to levy upon and sell such taxpayer's real and personal property for the payment of the amount assessed with the cost of executing the warrant, and to return such warrant to the Comptroller and to pay him the money collected by virtue thereof within 60 days after receipt of the warrant. If the Comptroller finds that collection of the tax is in jeopardy, notice and demand for immediate payment of such tax may be made by the Comptroller and upon failure or refusal to pay such tax the Comptroller may issue a warrant without regard to the 10-day waiting period provided in this section.

Section 4—Lien of Tax

If any tax imposed by this part is not paid when due, the Comptroller may file in the office of the registry of deeds of the county where such property is located with respect to real property or fixtures and in the office in which a security or financing statement or notice with respect to personal property would be filed a notice of lien specifying the amount of the tax, addition to tax, penalty and interest due, the name and last known address of the taxpayer liable for the amount and the fact that the Comptroller has complied with all the provisions of this part in the assessment of the tax. From the time of the filing, the amount set forth in the certificate constitutes a lien upon all property of the taxpayer in the county then owned by him or thereafter acquired by him in the period before the expiration of the lien. In the case of any prior mortgage on any real or personal property so written as to secure a present debt and also future advances by the mortgagee to the mortgagor, the lien herein provided, when notice thereof has been filed in the proper office, shall be subject to the prior mortgage unless the Comptroller also notifies the mortgagee of the recording of the lien in writing, in which case any indebtedness thereafter created from the mortgagor to the mortgagee shall be junior to the lien herein provided for. The lien provided herein has the same force, effect and priority as a judgment lien and continues until it becomes unenforceable by reason of lapse of time unless sooner released or otherwise discharged.

Section 5—Release of Lien

The Comptroller shall issue to the taxpayer a certificate of release of the lien provided for in this part or subordinate the lien to other liens if:

- (a). The Comptroller finds that the liability for the amount demanded, together with costs, has been satisfied or has become unenforceable by reason of lapse of time;
- (b). There is furnished to the Comptroller a bond with surety approved by the assessor in a sum sufficient to equal the amount demanded, together with costs, the bond to be conditioned upon payment of any judgment rendered in proceedings regularly instituted by the Comptroller to enforce collection thereof at law or of any amount agreed upon in writing by the Comptroller to constitute the full amount of the liability;
- (c). The Comptroller determines at any time that the interest of this state in the property has no value;
- (d). The Comptroller determines that the taxes are sufficiently secured by a lien on other property of the taxpayer or that the release or subordination of the lien will not endanger or jeopardize the collection of the taxes.

Section 6—Enforcement of Lien

The lien provided for by section 4 may be enforced at any time after the tax liability with respect to which the lien arose becomes collectible under Section 2 by a civil action brought by the Attorney General in the name of the State of Texas in the District Court of the county in which the property is located to subject any property, of whatever nature, of the taxpayer, or in which he has any right, title or interest, to the payment of such tax or liability. The court shall, after the parties have been only notified of the action, proceed to adjudicate all matters involved therein and finally determine the merits of all claims to and liens upon the property, and, in all cases where a claim or interest of the State of Texas therein is established, may decree a sale of such property, by the proper officer of the court, and a distribution of the proceeds of such sale according to the findings of the court. If the property is sold to satisfy a lien held by the State of Texas, the State of Texas may bid at the sale such sum, not exceeding the amount of such lien with expenses of sale, as the Comptroller directs.

Section 7—Taxpayer not a Resident

When notice and demand for the payment of a tax is given to a foreign corporation and it appears to the Comptroller that it is not practicable to locate property of the taxpayer sufficient in amount to cover the amount of tax due, he shall send a copy of the notice of lien provided for in section 4 to the taxpayer at the business's last known address together with a notice that such certificate has been filed with the registry of deeds. Thereafter, the Attorney General at the request of the Comptroller may institute any action or proceeding to collect or enforce such claim in any place and by any procedure that a civil judgment of a court of record of this state could be collected or enforced. The Comptroller is authorized to enter into agreements with the tax departments of other states and the District of Columbia for the collection of taxes from persons found in this state who are delinquent in the payment of income taxes imposed by those states or the District of Columbia afford similar assistance in the collection of taxes from persons found in those jurisdictions who are delinquent in the payment of taxes imposed under this part.

Section 8—Action for Recovery of Taxes

The Attorney General within 6 years after the assessment of any tax may bring an action in any court of competent jurisdiction within or without this state in the name of the State of Texas to recover the amount of any taxes, additions to recover the amount of any taxes, additions to tax, penalties and interest due and unpaid under this part. In such action, the certificate of the Comptroller showing the amount of the delinquency shall be prima facie evidence of the evidence of the levy of the tax, of the delinquency, and of the compliance by the Comptroller with all the provisions of this part in relation to the assessment of the tax. Claims of the state for sums under this part shall have preference in any distribution of the assets of the taxpayer, whether in bankruptcy, insolvency or otherwise. The proceeds of any judgment shall be paid to the Comptroller.

Section 9—Income Tax Claims of Other States

The courts of this state shall recognize and enforce liabilities for corporate income taxes lawfully imposed by any other state which extends a

like comity to this state, and the duly authorized officer of any such state may sue for the collection of such a tax in the courts of this state. A certificate by the Secretary of State of such other state that an officer suing for the collection of such a tax is duly authorized to collect the tax shall be conclusive proof of such authority. For the purposes of this section, the word "taxes" shall include additions to tax, interest and penalties shall be recognized and enforced by the courts of this state to the same extent that the laws of such other state permit the enforcement in its courts of liability for such taxes, additions to tax, interest and penalties due this state under this part.

Section 10—Order to Compel Compliance

(a). Failure to file tax return. If any taxpayer willfully refuses to file an income tax return required by this part, the Comptroller may apply to the District Court of Travis County, and upon the complaint of the Comptroller, the court shall issue an order requiring the taxpayer, any principal officer of such corporation, to file a proper return in accordance with this part, upon pain of contempt. The court shall forthwith fix a time and place for hearing and cause 20 days' notice thereof to be given the taxpayer, having regard to the speediest possible determination of the case consistent with the rights of the parties.

(b). Failure to furnish records or testimony. If any taxpayer willfully refuses to make available any books, papers, records or memoranda for examination by the Comptroller or his representative or willfully refuses to attend and testify pursuant to the powers conferred on the Comptroller by section 1 of this Article, the Comptroller may apply to the District Court of Travis County for an order directing the taxpayer to comply with the Comptroller's request for books, papers, records or memoranda or for his attendance and testimony.

Section 11—Jeopardy Assessments

(a). Filing and notice. If the Comptroller finds that the assessment or the collection of a tax or a deficiency for any year, current or past, will be jeopardized in whole or in part by delay, he may mail or issue notice of his finding to the taxpayer, together with a demand for immediate payment of the tax or the deficiency declared to be in jeopardy, including additions to tax, interest and penalties.

(b). Termination of taxable year. In the case of a tax for a current period, the Comptroller shall declare the taxable period of the taxpayer immediately terminated and his notice and demand for a return and immediate payment of the tax shall relate to the period declared terminated, including therein income accrued and deductions incurred up to the date of termination if not otherwise properly includible or deductible in respect of the period.

(c). Collection. A jeopardy assessment is immediately due and payable and proceedings for collection may be commenced at once. The taxpayer, however, may stay collection and prevent the jeopardy assessment from becoming final by filing, within 10 days after the date of mailing or issuing the notice of jeopardy assessment, a request for reassessment, accompanied by a bond or other security in the amount of the assessment, including addition to tax, penalties and interest as to which the stay of collection is sought. If a request for reassessment, accompanied by a bond or other

security of the appropriate amount, is not filed within the 10-day period, the assessment becomes final.

(d). Proceeding on reassessment. If a request for reassessment accompanied by a bond or other security is filed within the 10-day period, the Comptroller shall reconsider the assessment and, if the taxpayer has so requested in his petition, the Comptroller shall grant him or his authorized representatives an oral hearing. The Comptroller's action on the request for reassessment becomes final upon the expiration of 30 days from the date when he mails notice of his action to the taxpayer, unless within that 30-day period, the taxpayer files an application to seek judicial review of the Comptroller's determination.

(e). Presumptive evidence of jeopardy. In any proceeding brought to enforce payment of taxes due and payable by this section, the finding of the Comptroller under subsection (a) is for all purposes presumptive evidence that the assessment or collection of the tax or deficiency was in jeopardy.

(f). Abatement if jeopardy does not exist. The Comptroller may abate the jeopardy assessment if he finds that jeopardy does not exist.

Section 12—Bankruptcy or Receivership

(a). Immediate assessment. Upon the adjudication of bankruptcy of any taxpayer in any bankruptcy proceeding or the appointment of a receiver for any taxpayer in any receivership proceeding before any court of the United States or any state or territory or of the District of Columbia, any deficiency, together with additions to tax and interest provided by law, determined by the Comptroller may be immediately assessed.

(b). Adjudication of claims. Claims for the deficiency and such additions to tax and interest may be presented, for adjudication in accordance with law, to the court before which the bankruptcy or receivership proceeding is pending, despite the pendency of a protest before the Comptroller after the adjudication of bankruptcy or appointment of the receiver.

Article 10—Criminal Offenses

Section 1—Attempt to Evade or Defeat Tax

Any taxpayer who willfully attempts in any manner to evade or defeat any tax imposed by this part or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than 5 years, or both, together with the costs of prosecution.

Section 2—Failure to File Return, Supply Information, Pay Tax

Any taxpayer required under this part to pay any tax or estimated tax, or required by this part or regulation prescribed thereunder to make a return, other than a return of estimated tax, keep any records or supply any information, who willfully fails to pay such tax or estimated tax, make such return, keep such records or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof,

shall be fined not more than \$5,000 or imprisoned not more than one year, or both, together with the costs of prosecution.

Section 3—False Statements

Any taxpayer who willfully makes and subscribes any return, statement or other document, which contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter; or willfully aids or procures the preparation or presentation in a matter arising under the provisions of this part of a return, affidavit, claim or other document which is fraudulent or is false as to any material matter shall be guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or imprisoned not more than 3 years, or both, together with the costs of prosecution.

Section 4—Limitations

Any prosecution under this part shall be instituted within 3 years after the commission of the offense, provided that if such offense is the failure to do an act required by or under this part to be done before a certain date, a prosecution for such offense may be commenced not later than 3 years after such date. The failure to do any act required by or under this part shall be deemed an act committed in part at the principal office of the Comptroller. Any prosecution under this part may be conducted in any county where the corporation to whose liability the proceeding relates has a place of business, or in any county in which such crime is committed. The Attorney General shall have concurrent jurisdiction with the county attorney in the prosecution of any offenses under this part.

Article 11—Powers Of Comptroller

Section 1—Powers of the Comptroller.

(a). General. The Comptroller shall administer and enforce the tax imposed by this part and he is authorized to make such rules and regulations and to require such facts and information to be reported as he may deem necessary to enforce the provisions of this part. The Comptroller may for enforcement and administrative purposes divide the state into a reasonable number of districts in which branch offices may be maintained.

(b). Returns and forms. The Comptroller may prescribe the form and contents of any return or other document required to be filed under this part.

(c). Examination of books and witnesses. The Comptroller for the purpose of ascertaining the correctness of any return, or for the purpose of making an estimate of taxable income of any taxpayer, shall have power to examine or to cause to have examined, by any agent or representative designated by him for that purpose, any books, papers, records or memoranda bearing upon the matters required to be included in the return, and may require the attendance of the taxpayer rendering the return or any officer or employee of such taxpayer, or the attendance of any other person having knowledge in the premises, and may take testimony and require proof material for his information, with power to administer oaths to such person or persons.

(d). Secrecy of returns and information. Except in accordance with proper judicial order or as otherwise provided by law, it shall be unlawful for the Comptroller or any officer or employee of the Comptroller, any person engaged or retained by such bureau on an independent contract basis, or any person who, pursuant to this section, is permitted to inspect any report or return or to whom a copy, an abstract or a portion of any report or return is furnished, to divulge or make known in any manner the amount of income or any particulars set forth or disclosed in any report or return required under this part. The officers charged with the custody of such reports and returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, except on behalf of the Comptroller in any action or proceeding under the provisions of the tax law to which he is a party, or on behalf of any party to any action or proceeding under this part when the reports or facts shown thereby are directly involved in such action or proceeding, in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein shall be construed to prohibit the delivery to a taxpayer or his duly authorized representative of a certified copy of any return or report filed in connection with his tax or to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof, or the inspection by the Attorney General or other legal representatives of the state of the report or return of any taxpayer who shall bring an action to review the tax based thereon, or against whom an action or proceeding for collection of tax has been instituted. Any person who violates the provisions of this subsection shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or imprisoned not more than one year, or both, in the discretion of the court, together with costs of prosecution. If the offender is an officer or employee of the state, he shall be dismissed from office and be ineligible to hold any public office in this state for a period of 5 years thereafter.

(e). Reports and returns preserved. Reports and returns required to be filed under this part shall be preserved for 3 years and thereafter until the Comptroller orders them to be destroyed.

(f). Cooperation with the United States and other states. Notwithstanding the provisions of subsection (d), the Comptroller may permit the Secretary of the Treasury of the United States or his delegates, or the proper officer of any state imposing an income tax, or the authorized representative of either such officer, to inspect the income tax returns of any taxpayer subject to tax under this Act, or may furnish to such officer or his authorized representative an abstract of the income tax return or supply him with information concerning an item of income contained in any return or disclosed by the report of any investigation of the income or income tax return, but such permission shall be granted only if the statutes of the United States or of such other state, as the case may be, grant substantially similar privileges to the Comptroller of this State as the officer charged with the administration of the tax imposed by this part and provide for the secrecy of returns and information in a manner substantially similar to this section.

Section 2—Closing Agreements

(a). Comptroller authorized. The Comptroller or any person authorized

in writing by him, is authorized to enter into an agreement with any taxpayer relating to the liability of such taxpayer in respect to the tax imposed by this part for any taxable period.

(b). Finality. If such agreement is approved by the Attorney General within such time as may be stated in such agreement or later agreed to, such agreement shall be final and conclusive and, except upon a showing of fraud or malfeasance or misrepresentation of material fact:

1. The case shall not be reopened as to matters agreed upon or the agreement modified by any officer, employee or agent of this state, and

2. In any suit, action or proceeding under such agreement, or any determination, assessment, collection, payment, abatement, refund or credit made in accordance therewith, shall not be annulled, modified, set aside or disregarded.

Section 3—Disposition of Revenues

(a). Comptroller shall pay over all receipts collected to the Treasurer of State promptly and such receipts shall be credited to the General Fund.

Article 12—Effective Date

This Act shall take effect October 1, 1971.

Article 13—Franchise Tax Repeal

Section 1. Effective May 1, 1972, Chapter 12, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is repealed. The repeal of the franchise tax as provided in this Section does not affect any obligation or debt to the state incurred before the date of repeal and the Comptroller may collect any amount due in payment of the franchise tax as though the tax were still in effect. The Comptroller shall make rules and regulations for the collection of any franchise tax accrued before the date of repeal but not paid by that date.

Mr. Atwell moved to table the above amendment offered by Mr. Tom Moore.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—84

Adams	Calhoun	Finnell	Hull
Agnich	Cates	Finney	Ingram
Allen, John	Cavness	Foreman	Jones, D.
Atwell	Christian	Garcia	Jones, E.
Atwood	Clayton	Golman	Jones, G.
Baker	Cobb	Hanna, Joe	Jungmichel
Blanton	Craddick	Harding	Kost
Blythe	Davis, D.	Hawn	Lee
Bowers	Davis, H.	Heatly	Lemmon
Braecklein	Doran	Holmes, T.	Lovell
Burgess	Earthman	Howard	McAlister
Bynum	Finck	Hubenak	McKissack

Mengden	Parker, W.	Semos	Tarbox
Moncrief	Pickens	Shannon	Traeger
Moore, A.	Poerner	Sherman	Uher
Moore, G.	Poff	Short	Von Dohlen
Nabers	Presnal	Slack	Ward
Newton	Price	Slider	Wayne
Nugent, J.	Rosson	Solomon	Wieting
Ogg	Sanchez	Spurlock	Williamson
Orr	Schulle	Swanson	Wyatt

Nays—61

Allen, Joe	Dramberger	Kilpatrick	Rodriguez
Allred	Farenthold	Kubiak	Salem
Angly	Floyd	Lewis	Salter
Bass, B.	Gammage	Ligarde	Santiesteban
Bass, T.	Grant	Lombardino	Silber
Beckham	Hale	Longoria	Simmons
Bigham	Hannah, John	Moore, T.	Smith
Braun	Harris	Moreno	Stewart
Caldwell	Hawkins	Murray	Truan
Carrillo	Haynes	Nelms	Tupper
Clark	Head	Neugent, D.	Vale
Cole	Hendricks	Nichols	Williams
Cruz	Hilliard	Niland	Wolff
Daniel	Holmes, Z.	Parker, C.	
Denton	Johnson	Patterson	
Doyle	Kaster	Reed	

Absent

Graves

Absent-Excused

Boyle	Coats	Stroud
-------	-------	--------

REASON FOR VOTE

I voted for the corporation profits tax because we must have a balanced tax bill. Texans pay taxes on automobiles produced in Michigan, shoes from Massachusetts, and articles from our other 49 states. It is only fair that people from other states who use our products should share some of Texas' tax burdens as we share many of theirs.

The magnitude of this bill must contain an equal share between the corporation and the consumer. Our people cannot continue to carry 86% of the tax burden.

Signed: Dan Kubiak

REASON FOR VOTE

My reason for voting for the Tom Moore amendment substituting Corporation Income Tax for the Franchise Tax is as follows:

Though I would have preferred to have kept a reduced Franchise Tax and

a smaller Corporation Income Tax, I felt that the volume of revenue needed by the State of Texas justified the inclusion of a Corporation Income Tax.

Signed: Jack R. Hawkins

There being no further amendments offered to Article 7, the House proceeded to consideration of Article 8.

Mr. Ogg offered the following amendment to Article 8 of Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by striking the present Article 8 and adding a new Article 8 as follows:

Article 8

Section 1. (a) There are exempted from the one percent increase in the Motor Vehicle Retail Sales and Use Tax and from the three-fourths of one percent increase in the Limited Sales, Excise and Use Tax imposed by this Act the receipts from the sale, use, or rental, and the storage, use, or consumption in this state of motor vehicles and taxable items, if:

(1) the vehicles or items are used for the performance of a written contract entered into prior to the effective date of this Act, if the contract is not subject to change or modification by reason of the tax; or the vehicles or items are used pursuant to an obligation of a bid or bids submitted prior to the effective date of this Act, if the bid or bids may not be withdrawn, modified, or changed by reason of the tax imposed by this Act; and

(b) The exemptions provided by this section have no effect after two years following the effective date of this Act.

Sec. 2. This Act takes effect on July 1, 1971, on the condition that it is passed by a vote of at least two-thirds of all members elected to each House as required by Section 39, Article III, Constitution of the State of Texas. Otherwise, this Act takes effect on September 1, 1971.

Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 4. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force as provided by Section 2 of this article, and it is so enacted.

The amendment was adopted without objection.

Mr. Grant Jones offered the following amendment to Article 2 of Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by adding a Section 2 to Article 2 to read as follows:

Sec. 2. Chapter 6, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding an Article 6.031 to read as follows:

"Article 6.031. Substitution of Vehicles.

"If a motor vehicle dealer who has obtained a certificate of title to a motor vehicle which he uses for personal or business purposes purchases another motor vehicle upon which he obtains a certificate of title as a substitute vehicle, he may deduct from the motor vehicle sales and use tax due on the purchase of the second motor vehicle four percent of the fair market value of the first motor vehicle if the first motor vehicle is sold within 90 days of the substitution. The term 'dealer,' as used in this Article, means any person purchasing motor vehicles for resale at retail."

The amendment was adopted without objection.

Mr. Williamson offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by renumbering Sections 3, 4, and 5 of Article 1 as Sections 4, 5, and 6, and adding a new Section 3 to read as follows:

Sec. 3. Section (Y), Article 20.04, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

(Y) Contracts with Exempt Organizations. There are exempted from the computation of the amount of taxes imposed by this Chapter, the receipts from the sale, lease or rental of any tangible personal property to, or the storage, use or other consumption of tangible personal property by, any contractor for the performance of a contract for the improvement of realty for any exempt organization defined in Section 20.04 (H)(5) of this Chapter to the extent of the value of the tangible personal property so used or consumed or both in the performance of such contract.

Mr. Ogg moved to table the above amendment offered by Mr. Williamson.

The motion to table prevailed.

Mr. Williamson offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by renumbering Article 8 as Article 9 and adding a new Article 8 to read as follows:

Article 8.

"Section 1. Section 21, Article I, Texas Liquor Control Act (Article 666-21, Vernon's Texas Penal Code), as amended, is amended to read as follows:

"Section 21.

"There is hereby levied and imposed on the first sale in addition to the other fees and taxes levied by this Act the following:

"(a) A tax of \$2.17 per gallon on each gallon of distilled spirits, providing the minimum tax on any package of distilled spirits shall be \$.139.

"(b) A tax of \$.132 on each gallon of vinous liquor that does not contain over 14 percent of alcohol by volume.

"(c) A tax of \$.264 on each gallon of vinous liquor containing more than 14 percent and not more than 24 percent of alcohol by volume.

"(d) A tax of \$.330 on each gallon of artificially carbonated and natural sparkling vinous liquor.

"(e) A tax of \$.660 on each gallon of vinous liquor containing alcohol in excess of 24 percent by volume.

"(f) A tax of \$.165 on each gallon of malt liquor containing alcohol in excess of four percent by weight.

"The term 'first sale' as used in Article I of this Act shall mean and include the first sale, possession, distribution, or use in this state of any and all liquor refined, blended, manufactured, imported into, or in any other manner produced or acquired, possessed, or brought into this state.

"The tax herein levied shall be paid by affixing a stamp or stamps on each bottle or container of liquor. Said stamps shall be affixed in strict accordance with any rule or regulation promulgated in pursuance of this Act; provided, however, any holder of a permit as a retail dealer as that term is defined herein shall be held liable for any tax due on any liquor sold on which the tax has not been paid.

"It shall be the duty of each person who makes a first sale of any liquor in this state to affix said stamps on each bottle or container of liquor and to cancel the same in accordance with any rule and regulation of the Commission. The Commission shall have power to relax the foregoing provision when in its judgment it would be impracticable to require the affixing of such stamp on the bottle or container, irrespective of any other provision of this Act. And any person, persons, or association who violates any portion of this Section shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than One Hundred Dollars (\$100) nor more than One Thousand Dollars (\$1000), or by imprisonment in the county jail for not less than thirty (30) days nor more than one (1) year. Every holder of a permit authorizing the wholesaling of liquor, upon receipt of a shipment of liquor for sale within this state, under the provisions of this Act, shall prepare and furnish such information and such reports as may be required by rules and regulations of the Commission. Any person authorized to export liquor from this state having in his possession any liquor intended for shipment to any place without the state, shall keep such liquors in a separate compartment from that of liquors intended for sale within the state so that the same may be easily inspected and shall attach to each such package of liquor so intended for shipment without the state a stamp of the kind and character that shall be required by proper rule or regulation denoting that the same is not intended for sale within the state. When such liquors are so kept and so stamped, no tax on account thereof shall be charged. For defraying the expenses thereof, a charge of twenty-five cents (25¢) shall be made for every such stamp, except that a charge of ten cents (10¢) shall be made for each such stamp placed on vinous or malt liquors of twenty-four percent (24%) alcoholic content or less. All such permittees authorized to transport liquor beyond the boundaries of this state shall furnish to

the Commission duplicate copies of all invoices for the sale of such liquors, within twenty-four (24) hours after such liquors have been removed from their place of business."

Mr. Atwell moved to table the above amendment offered by Mr. Williamson.

LEAVE OF ABSENCE GRANTED

On motion of Mr. Nichols, Mr. Graves was granted leave of absence for the remainder of today on account of important business.

HB 730—(Consideration continued)

A record vote was requested on the motion to table the amendment by Mr. Williamson.

The motion to table prevailed by the following vote:

Yeas—98

Agnich	Floyd	Lee	Reed
Allen, Joe	Foreman	Ligarde	Rodriguez
Allen, John	Gammage	Lombardino	Salem
Atwell	Garcia	Longoria	Sanchez
Atwood	Golman	McAlister	Santiesteban
Baker	Hale	McKissack	Schulle
Bass, T.	Hanna, Joe	Mengden	Semos
Blanton	Harding	Moncrief	Shannon
Blythe	Harris	Moore, A.	Sherman
Bowers	Hawn	Moore, G.	Short
Braecklein	Haynes	Moreno	Silber
Braun	Hilliard	Murray	Simmons
Bynum	Holmes, T.	Nelms	Slack
Carrillo	Holmes, Z.	Neugent, D.	Spurlock
Cobb	Hubenak	Newton	Tarbox
Craddick	Hull	Niland	Traeger
Cruz	Johnson	Nugent, J.	Truan
Davis, D.	Jones, D.	Ogg	Tupper
Doran	Jones, E.	Parker, C.	Vale
Doyle	Jones, G.	Parker, W.	Von Dohlen
Dramberger	Jungmichel	Patterson	Ward
Earthman	Kaster	Pickens	Wolff
Farenthold	Kilpatrick	Poerner	Wyatt
Finck	Kost	Presnal	
Finney	Kubiak	Price	

Nays—45

Adams	Clark	Hendricks	Slider
Allred	Clayton	Howard	Solomon
Angly	Cole	Ingram	Stewart
Bass, B.	Daniel	Lemmon	Swanson
Beckham	Davis, H.	Lewis	Uher
Bigham	Denton	Lovell	Wayne
Burgess	Finnell	Nabers	Wieting
Caldwell	Grant	Nichols	Williams
Calhoun	Hannah, John	Orr	Williamson
Cates	Hawkins	Poff	
Cavness	Head	Rosson	
Christian	Heatly	Salter	

Absent

Moore, T. Smith

Absent-Excused

Boyle Coats Graves Stroud

REASON FOR VOTE

I voted "Yes" on the Williamson amendment because we will have the liquor-by-the-drink legislation at which time we will place the proper tax on distilled spirits. This is not the proper place for this tax.

Signed: Dan Kubiak

Mr. Jim Nugent offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by adding Article 4A following the end of Article 4 on page 8 which shall read as follows:

Section 1. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a Chapter 31 to read as follows:

"Chapter 31. Occupation Tax on Sellers of Jet Fuel

"Article 31.01 Definitions. In this chapter:

"(1) 'Person' means an individual, firm, corporation, association, or other private entity.

"(2) 'Seller' means any person engaged in the business of selling jet fuel for consumption and use in aircraft, but does not include a person who sells fuel for resale only.

"(3) 'Jet fuel' means any petroleum product, other than fuel taxed under Chapter 9 or Chapter 10 of this Title, used as fuel to propel any type of aircraft.

"Article 31.02 Tax Imposed. There is imposed an occupation tax on every seller of jet fuel for use and consumption and not for resale.

"Article 31.03 Rate of Tax. The tax imposed by this chapter is at the rate of five cents for each gallon of jet fuel sold in this state by a seller for use and consumption in any aircraft except aircraft owned and operated by the United States or any military unit of the United States or this state.

"Article 31.04 Report and Payment of Tax. (a) On or before the 25th day of each month each seller shall deliver to the office of the Comptroller a verified report showing the number of gallons of jet fuel sold in this state for use and consumption during the preceding calendar month.

"(b) The Comptroller shall prescribe the form of the report and may require additional information necessary to enforce the tax imposed by this chapter.

"(c) The seller shall deliver to the Comptroller with the report cash or a certified check or cashier's check in the amount of the tax due for the period covered by the report.

"(d) A person who fails to file when due a report required by the Comptroller under this article shall pay to the Comptroller within 10 days after demand a penalty of \$50 for each failure.

"(e) Interest accrues on past-due taxes at the rate of six percent per annum.

"Article 31.05 Records. Each seller shall keep in Texas for a period of two years a complete record of the number of gallons of jet fuel sold in this state for use and consumption. The record may be inspected by the Comptroller or Attorney General, or one of their authorized representatives, on reasonable notice during normal business hours.

"Article 31.06 Failure to File Report. (a) No seller, or agent, officer, or employee of a seller, may:

"(1) knowingly file a false or incomplete report required by Article 31.04 of this chapter;

"(2) destroy, mutilate, conceal, or falsify any of the books or records of the seller; or

"(3) refuse to permit the Comptroller or the Attorney General, or one of their authorized representatives, to inspect or audit any books or records of the seller.

"(b) Any seller, or agent, officer, or employee of a seller, who violates a provision of Subsection (a) of this article is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$500.

"Article 31.07 Failure to Pay Tax. (a) Any seller, or agent, officer, or employee of a seller who knowingly fails to pay the tax due as required by this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.

"(b) If the Comptroller believes any seller has failed to pay the full amount of tax due under this, the Comptroller may employ auditors or other persons to audit the seller's records and, if the tax has not been paid in full, the seller shall pay the cost of the audit.

"(c) Payments for audits made under Subsection (b) of this article shall be placed in a special fund in the state treasury and used by the Comptroller to pay the costs of audits made under this chapter.

"Article 31.08 Lien on Property for Failure to Pay. All taxes, fines, and interest due by any seller under this chapter constitute a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time the liens originated, against all the property of the seller devoted to or used in his business.

"Article 31.09 Enforcement Fund. (a) Before any allocation of the tax collected under this chapter is made, one percent of the gross amount of the tax collected shall be placed in the state treasury in a special fund for the Comptroller's use in administering and enforcing this chapter.

"(b) The Legislature shall provide in the General Appropriations Act for expenditures from this special fund and from the auditors fund established by Article 31.07(c) of this chapter.

"(c) At the end of each biennium, or other fiscal period prescribed by the Legislature, any unexpended portion of the special fund for the administration and enforcement of this chapter shall be transferred one-fourth to the available school fund and three-fourths to the general revenue fund.

"Article 31.10 Comptroller's Rules. The Comptroller shall adopt rules:

"(1) prescribing the form of records and reports required for collecting the tax imposed by this chapter;

"(2) defining the record-keeping responsibilities of sellers;

"(3) providing auditing procedures;

"(4) providing:

"(A) for deficiency and jeopardy determinations;

"(B) for certification and refund of overpayments; and

"(C) administrative hearing procedures; and

"(5) prescribing other requirements reasonably necessary to collect the tax imposed by this chapter.

"Article 31.11 Procedure for Adopting and Amending Rules. (a) Before the Comptroller may adopt a rule under Article 31.10 of this chapter, or an amendment to an adopted rule, he must mail a copy of the proposed rule or amendment, or an informative summary of the rule or amendment, to each seller in the state.

"(b) The rule or amendment takes effect on the 30th day after the day the copy or summary is mailed unless:

"(1) the Comptroller specifies that it takes effect at a later time; or

"(2) the Comptroller rescinds the order adopting the rule or amendment.

"(c) The Comptroller may rescind, but he may not change, the order adopting a rule or amendment from the time the copy or summary is mailed until the rule or amendment takes effect. After the rule or amendment takes effect, the Comptroller may repeal or change it only by adopting an order repealing or amending it.

"(d) If the Comptroller rescinds an order for a rule or amendment, he may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

"(e) The Comptroller shall supply free of charge to each seller in the state a copy of the rules of the Comptroller, and of all changes in the rules.

"Article 31.12 Disposition of Revenue. All proceeds from the collection of this tax after deduction of the amount provided in Article 31.09 shall be allocated one-fourth to the available school fund and three-fourths to the general revenue fund.

"Article 31.13. Motor Fuel Used in Airplanes Taxed. (a) The tax imposed by this chapter is applicable to motor fuel used in airplanes and is imposed at the rate of five cents for each gallon at the time of the first sale.

"(b) In this article 'airplanes' includes all aircraft or devices such as helicopters that are propelled through the air.

"(c) After the effective date of this article no refunds may be made for motor fuel on which the tax has been paid and used for aircraft unless the tax has been paid before the effective date of this article.

"(d) The distribution of motor fuel used in airplanes shall be as otherwise provided in this chapter.

"(e) Revenue from the tax received under this article shall be allocated one-fourth to the available school fund and three-fourths to the Aeronautics Commission Fund.

"(f) The Comptroller shall make rules and regulations for the enforcement and collection of the tax on motor fuel used in airplanes."

Signed: Jim Nugent and Howard

Mr. Atwell moved to table the above amendment offered by Mr. Jim Nugent.

A record vote was requested.

The motion to table was lost by the following vote:

Yeas—24

Atwell	Golman	Mengden	Sanchez
Blanton	Hawn	Moore, A.	Semos
Blythe	Jones, E.	Ogg	Shannon
Bowers	Kost	Orr	Sherman
Braecklein	Lee	Parker, W.	Slider
Earthman	McKissack	Pickens	Wayne

Nays—117

Adams	Beckham	Christian	Doran
Agnich	Bigham	Clark	Doyle
Allen, Joe	Braun	Cobb	Dramberger
Allen, John	Burgess	Cole	Farenthold
Allred	Bynum	Craddick	Finck
Angly	Caldwell	Cruz	Finnell
Atwood	Calhoun	Daniel	Finney
Baker	Carrillo	Davis, D.	Floyd
Bass, B.	Cates	Davis, H.	Foreman
Bass, T.	Cavness	Denton	Gammage

Garcia	Jones, G.	Newton	Solomon
Grant	Jungmichel	Nichols	Spurlock
Hale	Kaster	Niland	Stewart
Hanna, Joe	Kilpatrick	Nugent, J.	Swanson
Hannah, John	Kubiak	Parker, C.	Tarbox
Harding	Lemmon	Poerner	Traeger
Harris	Lewis	Poff	Truan
Hawkins	Ligarde	Presnal	Tupper
Haynes	Lombardino	Price	Uher
Head	Longoria	Reed	Vale
Hendricks	Lovell	Rodriguez	Von Dohlen
Hilliard	McAlister	Rosson	Ward
Holmes, T.	Moncrief	Salem	Wieting
Holmes, Z.	Moore, G.	Salter	Williams
Howard	Moore, T.	Santiesteban	Williamson
Hubenak	Moreno	Schulle	Wolff
Hull	Murray	Short	Wyatt
Ingram	Nabers	Silber	
Johnson	Nelms	Simmons	
Jones, D.	Neugent, D.	Slack	

Present—Not Voting

Clayton

Absent

Heatly Patterson Smith

Absent-Excused

Boyle Coats Graves Stroud

The amendment by Mr. Jim Nugent was then adopted.

Mr. Jim Nugent moved to reconsider the vote by which the amendment offered by himself to Committee Amendment No. 1 was adopted and to table the motion to reconsider.

The motion to table prevailed.

Mr. Wolff offered the following amendment to Committee Amendment No. 1:

Amend the committee substitute for HB 730 by adding Article 8 and renumbering each article thereafter accordingly:

Article 8

Sec. I. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to add a new Chapter 35 to read as follows:

“Chapter 35. Occupation Tax on Marl, Sand, Gravel, Shell, and Mud-shell Producers

“Article 35.01 Definitions. In this Act:

"(a) 'Comptroller' means the Comptroller of Public Accounts of the State of Texas.

"(b) 'Person' means any person, firm, corporation, or other private entity.

"(c) 'Producer' means any person who mines, dredges, gathers, or takes from the submerged lands of this state any marl, gravel, sand, shell, or mudshell of commercial value.

"(d) 'Submerged lands' means any land, reef, bar, island, lake, or bay in the territorial jurisdiction of this state submerged or surrounded by salt water.

"(e) 'Coarse shell or mudshell' means shell or mudshell which will not pass freely through a screen or sieve having a three-eighths ($\frac{3}{8}$) inch mesh.

"(f) 'Fine shell or mudshell' means all shell or mudshell other than coarse shell or mudshell.

"Article 35.02 Tax Levied; Rate. (a) There is imposed on each producer an occupation tax on the mining, dredging, gathering, and taking of marl, gravel, sand, shell, or mudshell of commercial value from the submerged land of this state.

"(b) The amount of tax to be paid by each producer shall be determined by multiplying:

"(1) 60 cents times the total number of cubic yards of coarse shell or mudshell produced,

"(2) 54 cents times the total number of cubic yards of fine shell or mudshell produced, and

"(3) 25 cents times the total number of cubic yards of marl, sand, and gravel produced.

"Article 35.03 Report and Payment of Tax. (a) On the 25th day of each month, every producer shall deliver to the office of the Comptroller a verified report

"(1) compiled from daily records of the previous month; and

"(2) showing the number of cubic yards of marl, sand, gravel, shell, and mudshell mined, dredged, gathered, or taken from the submerged lands of this state during the previous month.

"(b) The Comptroller shall prescribe the form of the report.

"(c) The producer shall deliver to the Comptroller with the report a check or legal tender in the amount of tax due for the period covered by the report.

"(d) A person who fails to file when due a report required by the Comptroller under this Article shall pay to the Comptroller within 10 days after demand a penalty of \$50 for each failure.

"(e) Interest accrues on past-due taxes at the rate of six percent per annum.

"Article 35.04 Records. Each producer shall keep in Texas for a period of two years a complete record of every cubic yard of marl, sand, gravel, shell, and mudshell mined, dredged, gathered, or taken from the submerged lands of this state. The record may be inspected by the Comptroller or Attorney General, or one of their authorized representatives, on reasonable notice during normal business hours.

"Article 35.05 Failure to File Report. (a) No producer, or agent, officer, or employee of a producer, may

"(1) knowingly file a false or incomplete report required by Article 35.03 of this Chapter;

"(2) destroy, mutilate, conceal or falsify any of the books or records of the producer; or

"(3) refuse to permit the Comptroller or the Attorney General, or one of their authorized representatives, to inspect or audit any books or records of the producer.

"(b) Any producer, or agent, officer, or employee of a producer, who violates a provision of Subsection (a) of this Article is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500.

"Article 35.06 Failure to Pay Tax. (a) Any producer, or agent, officer, or employee of a producer who knowingly fails to pay the tax due under this Chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$5,000.

"(b) If the Comptroller believes any producer has failed to pay the full amount of tax due under this, the Comptroller may employ auditors or other persons to audit the producer's records and, if the tax has not been paid in full, the producer shall pay the cost of the audit.

"(c) Payments for audits made under Subsection (b) of this Article shall be placed in a special fund in the state treasury and used by the Comptroller to pay the costs of audits made under this Chapter.

"Article 35.07 Lien on Property for Failure to Pay. All taxes, fines, and interest due by any producer under this Chapter constitute a preferred lien, first and prior to any and all other existing liens, contract or statutory, legal or equitable, and regardless of the time the liens originated, against all the property of the producer devoted to or used in his business. This property includes: dredges, ships, earth-moving equipment, storage tanks; warehouses; office buildings and equipment; trucks or other motor vehicles; stocks on hand of marl, sand, gravel, shell, and mudshell; and any other real or personal property used in carrying on the business of the producer.

"Article 35.08 Enforcement Fund. (a) Before any allocation of the tax collected under this Chapter is made, one percent of the gross amount of the tax collected shall be placed in the state treasury in a special fund for the Comptroller's use in administering and enforcing this Chapter.

"(b) The legislature shall provide in the General Appropriations Act for expenditures from this special fund and from the auditors fund established by Article 35.06(c) of this Chapter.

"(c) At the end of each biennium, or other fiscal period prescribed by the legislature, any unexpended portion of the special fund for the administration and enforcement of this Chapter reverts to the general revenue fund.

"Article 35.09 Comptroller's Rules. The Comptroller shall adopt rules

"(1) prescribing the form of records and reports required for collecting the tax imposed by this Chapter;

"(2) defining the record-keeping responsibilities of processors;

"(3) providing auditing procedures;

"(4) providing

"(A) for deficiency and jeopardy determinations;

"(B) for certification and refund of overpayments; and

"(C) administrative hearing procedures; and

"(5) prescribing other requirements reasonably necessary to collect the tax imposed by this Chapter.

"Article 35.10 Procedure for Adopting and Amending Rules. (a) Before the Comptroller may adopt a rule under Article 35.09 of this Chapter, or an amendment to an adopted rule, he must mail a copy of the proposed rule or amendment, or an informative summary of the rule or amendment, to each processor in the state.

"(b) The rule or amendment takes effect on the 30th day after the day the copy or summary is mailed unless

"(1) the Comptroller specifies that it takes effect at a later time; or

"(2) the Comptroller rescinds the order adopting the rule or amendment.

"(c) The Comptroller may rescind, but he may not change, the order adopting a rule or amendment from the time the copy or summary is mailed until the rule or amendment takes effect. After the rule or amendment takes effect, the Comptroller may repeal or change it only by adopting an order repealing or amending it.

"(d) If the Comptroller rescinds an order for a rule or amendment, he may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

"(e) The Comptroller shall supply free of charge to each producer in the state a copy of the rules of the Comptroller, and of all changes in the rules."

Signed: Wolff, Dramberger, Silber, and Newton.

Mr. Slider moved to table the above amendment offered by Mr. Wolff.

A record vote was requested.

The vote of the House was taken on the motion to table the amendment offered by Mr. Wolff and the vote was announced Yeas 71, Nays 71.

A verification of the vote was requested and was granted.

The roll of those voting Yea and Nay was again called and the verified vote resulted as follows:

Yeas—69

Allen, John	Finney	Kubiak	Poerner
Atwell	Foreman	Lee	Rosson
Atwood	Garcia	Lemmon	Salem
Baker	Golman	Lewis	Sanchez
Blanton	Grant	Longoria	Santiesteban
Blythe	Hale	Lovell	Shannon
Braecklein	Harding	McAlister	Sherman
Burgess	Hawn	McKissack	Short
Bynum	Heatly	Mengden	Slack
Calhoun	Hendricks	Moore, A.	Slider
Carrillo	Hilliard	Murray	Swanson
Cavness	Holmes, T.	Neugent, D.	Tarbox
Clayton	Howard	Nugent, J.	Uher
Cobb	Hubenak	Ogg	Wayne
Craddick	Hull	Orr	Williamson
Davis, H.	Jones, D.	Parker, W.	
Doran	Jones, G.	Patterson	
Doyle	Jungmichel	Pickens	

Nays—70

Adams	Denton	Ligarde	Semos
Agnich	Dramberger	Lombardino	Silber
Allen, Joe	Earthman	Moncrief	Simmons
Allred	Farenthold	Moore, G.	Solomon
Angly	Finck	Moore, T.	Spurlock
Bass, B.	Finnell	Moreno	Stewart
Bass, T.	Floyd	Nabers	Traeger
Beckham	Hannah, John	Nelms	Truan
Bigham	Harris	Newton	Tupper
Bowers	Hawkins	Nichols	Vale
Braun	Haynes	Niland	Von Dohlen
Caldwell	Head	Parker, C.	Ward
Cates	Holmes, Z.	Poff	Wieting
Christian	Ingram	Price	Williams
Clark	Johnson	Reed	Wolff
Cole	Kaster	Rodriguez	Wyatt
Cruz	Kilpatrick	Salter	
Daniel	Kost	Schulle	

Present—Not Voting

Jones, E.

Absent

Davis, D. Gammage	Hanna, Joe	Presnal	Smith
----------------------	------------	---------	-------

Absent-Excused

Boyle	Coats	Graves	Stroud
-------	-------	--------	--------

The Speaker stated that the motion to table the Wolff amendment was lost by the above vote.

The vote of the House was taken on the adoption of the amendment by Mr. Wolff and the vote was announced Yeas 73, Nays 70.

A verification of the vote was requested and was granted.

The roll of those voting Yea was again called and the verified vote resulted as follows:

Yeas—73

Adams	Dramberger	Ligarde	Schulle
Agnich	Farenthold	Lombardino	Semos
Allen, Joe	Finck	Moncrief	Silber
Allred	Finnell	Moore, G.	Simmons
Angly	Floyd	Moore, T.	Smith
Bass, B.	Gammage	Moreno	Spurlock
Bass, T.	Hannah, John	Nabers	Stewart
Beckham	Harris	Nelms	Traeger
Bigham	Hawkins	Newton	Truan
Bowers	Haynes	Nichols	Tupper
Braun	Head	Niland	Vale
Caldwell	Hendricks	Parker, C.	Von Dohlen
Carrillo	Hilliard	Patterson	Wieting
Christian	Holmes, Z.	Poff	Williams
Clark	Ingram	Price	Wolff
Cole	Johnson	Reed	Wyatt
Cruz	Kaster	Rodriguez	
Daniel	Kilpatrick	Salter	
Denton	Kost	Santiesteban	

Nays—70

Allen, John	Cobb	Harding	Lewis
Atwell	Craddick	Hawn	Longoria
Atwood	Davis, H.	Heatly	Lovell
Baker	Doran	Holmes, T.	McAlister
Blanton	Doyle	Howard	McKissack
Blythe	Earthman	Hubenak	Mengden
Braecklein	Finney	Hull	Moore, A.
Burgess	Foreman	Jones, D.	Murray
Bynum	Garcia	Jones, G.	Neugent, D.
Calhoun	Golman	Jungmichel	Nugent, J.
Cates	Grant	Kubiak	Ogg
Cavness	Hale	Lee	Orr
Clayton	Hanna, Joe	Lemmon	Parker, W.

Pickens	Sanchez	Slider	Ward
Poerner	Shannon	Solomon	Wayne
Presnal	Sherman	Swanson	Williamson
Rosson	Short	Tarbox	
Salem	Slack	Uher	

Present—Not Voting

Jones, E.

Absent

Davis, D.

Absent-Excused

Boyle	Coats	Graves	Stroud
-------	-------	--------	--------

By unanimous consent, the House dispensed with the verification of those voting Nay.

The Speaker stated that the amendment offered by Mr. Wolff was adopted by the above vote.

Mr. Wolff moved to reconsider the vote by which the amendment offered by himself was adopted and to table the motion to reconsider.

The motion to table prevailed by the following vote:

Yeas—71

Adams	Denton	Kost	Santiesteban
Agnich	Dramberger	Kubiak	Schulle
Allen, Joe	Farenthold	Ligarde	Semos
Allred	Finck	Lombardino	Silber
Angly	Finnell	Moncrief	Simmons
Bass, B.	Floyd	Moore, T.	Smith
Bass, T.	Gammage	Moreno	Spurlock
Beckham	Hannah, John	Nabers	Stewart
Bigham	Harris	Nelms	Traeger
Bowers	Hawkins	Newton	Truan
Braun	Haynes	Nichols	Tupper
Caldwell	Head	Niland	Vale
Carrillo	Hendricks	Parker, C.	Von Dohlen
Christian	Holmes, Z.	Patterson	Wieting
Clark	Ingram	Price	Williams
Cole	Johnson	Reed	Wolff
Cruz	Kaster	Rodriguez	Wyatt
Daniel	Kilpatrick	Salter	

Nays—68

Allen, John	Braecklein	Clayton	Doyle
Atwell	Bynum	Cobb	Earthman
Baker	Calhoun	Craddick	Finney
Blanton	Cates	Davis, H.	Foreman
Blythe	Cavness	Doran	Garcia

Golman	Jones, D.	Moore, G.	Salem
Grant	Jones, G.	Murray	Sanchez
Hale	Jungmichel	Neugent, D.	Shannon
Hanna, Joe	Lee	Nugent, J.	Sherman
Harding	Lemmon	Ogg	Short
Hawn	Lewis	Orr	Slack
Heatly	Longoria	Parker, W.	Slider
Hilliard	Lovell	Pickens	Solomon
Holmes, T.	McAlister	Poerner	Swanson
Howard	McKissack	Poff	Tarbox
Hubenak	Mengden	Presnal	Uher
Hull	Moore, A.	Rosson	Williamson

Present—Not Voting

Jones, E.

Absent

Atwood	Davis, D.	Ward	Wayne
Burgess			

Absent-Excused

Boyle	Coats	Graves	Stroud
-------	-------	--------	--------

LEAVE OF ABSENCE GRANTED

On motion of Mr. Bynum, Mr. Dee Jon Davis was granted leave of absence for the remainder of today on account of important business.

HB 730—(Consideration continued)

Mr. Niland offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by renumbering Article 8 as Article 9 and adding a new Article 8 to read as follows:

Article 8.

Section 1. Section (i), Article 8.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

“(i) The words ‘Tobacco Products’ shall mean any cigars, cheroots, stogies, smoking tobacco (including granulated, plug-cut, crimp-cut, ready-rubbed, and any other kinds and forms of tobacco suitable for smoking in a pipe or cigarette), chewing tobacco (including Cavendish, Twist, plug, scrap and any other kind and form of tobacco suitable for chewing, however prepared), snuff; and shall include any other articles or products made of tobacco or any substitute therefor, but shall not include cigarettes.”

Sec. 2. Article 8.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

“Article 8.02 Tax Levy and Rate. There is hereby levied a tax upon the

'first sale' of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

"(a) Upon cigars of all description weighing not more than three (3) pounds per one thousand (1,000), one cent (1¢) for each ten (10) cigars or fraction thereof.

"(b) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) retailing for not more than three and three-tenths cents (3.3¢) each, Seven Dollars and fifty cents (\$7.50) per one thousand (1,000).

"(c) (1) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) retailing for over three and three-tenths cents (3.3¢) each, containing no substantial amount of nontobacco ingredients, having a factory list price, exclusive of this tax, of less than One Hundred Seventy Dollars (\$170) per thousand (1,000), Twelve Dollars (\$12) per thousand (1,000).

"(2) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) retailing for over three and three-tenths cents (3.3¢) each, containing no substantial amount of nontobacco ingredients, having a factory list price, exclusive of this tax, of One Hundred Seventy Dollars (\$170) or more per thousand (1,000), Fifteen Dollars (\$15) per thousand (1,000).

"(3) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) retailing for over three and three-tenths cents (3.3¢) each, containing a substantial amount of nontobacco ingredients, Fifteen Dollars (\$15) per thousand (1,000).

"(4) All cigars described in this Paragraph (c) are presumed to contain a substantial amount of nontobacco ingredients unless the report to the Comptroller made for the purpose of establishing the tax upon such cigars is accompanied by an affidavit, by the manufacturer when the manufacturer prepares such report or by both the manufacturer and the distributor, when the distributor prepares such report, stating that specific cigars described in such report contain no sheet wrapper, sheet binder, or sheet filler.

"(d) Upon all chewing tobacco, snuff, and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five percent (25%) of the factory list price, exclusive of any trade discount, special discount, or deals."

Mr. Williamson moved to table the above amendment offered by Mr. Niland.

The motion to table prevailed.

Mr. Poerner offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by renumbering Article 8 as Article 9 and adding a new Article 8 to read as follows:

Section 1. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a new Chapter 30, to read as follows:

"Chapter 30. Tax on Severing Timber.

"Article 30.01. Definitions. In this chapter, unless the context requires a different definition:

"(1) 'Owner' means the owner or owners of the land upon which timber was growing at the time of severance.

"(2) 'Purchases on the open market' means purchases made in the absence of any contract or agreement requiring the purchaser to make payment direct to the owner of the timber.

"(3) 'Severed' means the point at which the timber is severed from the surface of the earth.

"(4) 'Person' means any individual, firm, association, partnership, corporation, or other legal or commercial entity.

"Article 30.02. Tax Imposed. There is imposed a tax on the severing of timber from the soil of this state. The owner of the land upon which the timber was growing at the time of severing is liable for the tax.

"Article 30.03. Rates of Tax. The taxes imposed by this chapter shall be computed for timber according to the following rates:

"(1) on hardwood timber, \$2 per 1,000 board feet, determined according to log scale;

"(2) on softwood timber, \$2 per 1,000 board feet, determined according to log scale; and

"(3) on pulpwood, 90 cents per standard cord of four feet by four feet by eight feet.

"Article 30.04. Reports. (a) Every person owning land from which timber is severed from the soil of this state and every person severing the same shall, within 30 days after the expiration of each calendar quarter, file with the Comptroller of Public Accounts a report of the business conducted by the person reporting during the preceding quarter. The report shall show the kind of timber severed, the gross quantity of each, the names of the owners of the land and the timber at the time of severance, the portion owned by each, the school district wherein the land from which the timber was severed is located, and any other reasonable and necessary information that the Comptroller may require for the proper enforcement of this chapter. There shall also be shown on the report the place or places where timber is severed from the soil.

"(b) Except as otherwise provided in this chapter, the making of the reports, shall be by those actually engaged in the operation of severing, and the owner of the soil.

"(c) Purchasers of timber severed from the soil of this state shall, within 30 days after the expiration of each calendar quarter, file with the Comp-

troller of Public Accounts a report showing the names and addresses of all persons from whom they have purchased timber during the quarter. The report shall show the total quantity of and the gross price paid for each purchase, together with the names of those from whom the timber was purchased.

"Article 30.05. Withholding of Taxes. (a) Every person engaged in severing timber from the soil under contracts or agreements requiring payment direct to the owners of any royalty interest, excess royalty, or working interest either in money or in kind shall deduct from any amount due or from anything due the amount of the tax levied by this chapter before making the payment to the owner.

"(b) when any person engaged in severing timber from the soil sells the timber to another person under a contract or agreement which requires the purchaser to pay the owners of the timber direct, then the severer is not required to deduct the tax herein levied, but in that event, the deduction shall be made by the purchaser before making payments to each owner. Nothing herein is to be construed to release the person severing the timber from liability for the payment of the taxes.

"(c) Every person purchasing timber on the open market on which the tax levied by this chapter has not been paid shall deduct from any amount due the seller the amount of tax levied by this chapter.

"(d) Whenever the title to any timber being severed from the soil is in dispute, or whenever the purchaser thereof or any person engaged in severing timber is withholding payments on account of litigation, or for any reason, the purchaser of timber or the severer shall deduct from the gross amount thus held the amount of the tax imposed by this chapter.

"(e) Failure to withhold the tax due as provided herein shall not relieve either the person obligated to withhold nor the landowner, jointly and severally, from any liability imposed hereunder.

"Article 30.06. Payment of Taxes. Each person required to withhold from amounts due to others the tax imposed by this chapter shall file with the Comptroller the reports required by this chapter and shall at the time of filing pay to the Comptroller the amount of tax withheld, or the amount of taxes and interest due if not withheld. Nothing in this article is to be construed to release the landowner from the liability for the payment of the taxes.

"Article 30.07. Penalties. (a) Any person required by this chapter to file a report who fails to file the report shall forfeit to the state as a penalty the sum of \$5,000 for each failure.

"(b) Any person required by this chapter to remit the tax imposed by this chapter who fails to remit the tax shall forfeit to the state as a penalty the sum of \$5,000 for each failure.

"(c) Any person required by this chapter to withhold the tax imposed by this chapter from amounts paid to others who fails to withhold the tax shall be liable to the state for the full amount of any taxes, interest, and penalties that should have been withheld and remitted.

"(d) If any person fails to make a report required by this chapter within

the time and in the manner prescribed, the Comptroller shall examine the books, records, and files of the person to ascertain the amount and value of production or purchases and compute the tax due.

"Article 30.08. Allocation. The revenue derived from this tax shall be allocated one-fourth to the school district wherein the land is situated from which the timber was severed, and three-fourths to the general revenue fund.

"Article 30.09. Purchases from the State. If any of the timber covered by this chapter is purchased from the state or severed from soil belonging to the state, any severer or purchaser who would otherwise be required to withhold the amount of the taxes due under this chapter shall not withhold and remit the taxes, but shall make reports of the severing or purchasing in the usual manner with the additional notation that the timber was severed from soil belonging to the state."

Mr. Angly moved to table the above amendment offered by Mr. Poerner.

The motion to table prevailed.

Mr. Kilpatrick offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by adding Sections 6, 7, and 8 to Article 1 to read as follows:

Sec. 6. Section (W), Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(W) Taxable Items. 'Taxable items' means tangible personal property and taxable services."

Sec. 7. Article 20.01, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Section (V) to read as follows:

"(V) Taxable Services. 'Taxable services' means advertising in directories, shopper's guides, newspapers, and magazines, whether or not such publications are circulated free or without charge to the public; advertising on radio, movie, television, outdoor signs; and point-of-purchase advertising."

Sec. 8. Section (P), Article 20.10, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(P) Tangible Personal Property. 'Tangible Personal Property' means personal property which may be seen, weighed, measured, felt or touched, or which is in any other manner perceptible to the senses, and includes any stamps, coupons, tickets, certificates, cards or other similar devices which entitle the holder to procure any goods free of charge or for less than the retail market price upon production of a given number of them."

Mr. Atwell moved to table the above amendment offered by Mr. Kilpatrick.

The motion to table prevailed.

REASON FOR VOTE

I voted Present—Not Voting on the Kilpatrick amendment to HB 730 because of a possible conflict of interest.

Signed: Dan Kubiak

Mr. Clayton offered the following amendment to Committee Amendment No. 1:

Amend HB 730 by striking all below the enacting clause and substituting the following:

Section 1. There is hereby imposed a tax to be known as a transaction tax not to exceed 1½% and which is to be applied to all transactions taking place within the state.

Sec. 2. Article 20.02, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is repealed.

The above amendment failed of adoption by the following vote:

Yeas—10

Christian	Harding	McAlister	Traeger
Clayton	Jones, D.	Short	
Doran	Jones, G.	Tarbox	

Nays—132

Adams	Craddick	Hilliard	Moreno
Agnich	Cruz	Holmes, T.	Murray
Allen, Joe	Daniel	Holmes, Z.	Nabers
Allen, John	Davis, H.	Howard	Nelms
Allred	Denton	Hubenak	Neugent, D.
Angly	Doyle	Hull	Newton
Atwell	Dramberger	Ingram	Nichols
Baker	Earthman	Johnson	Niland
Bass, B.	Farenthold	Jones, E.	Nugent, J.
Bass, T.	Finck	Jungmichel	Ogg
Beckham	Finnell	Kaster	Orr
Bigham	Floyd	Kilpatrick	Parker, C.
Blanton	Foreman	Kost	Parker, W.
Blythe	Gammage	Kubiak	Patterson
Bowers	Garcia	Lee	Pickens
Braecklein	Golman	Lemmon	Poerner
Braun	Grant	Lewis	Poff
Burgess	Hale	Ligarde	Presnal
Bynum	Hanna, Joe	Lombardino	Price
Caldwell	Hannah, John	Longoria	Reed
Calhoun	Harris	Lovell	Rodriguez
Carrillo	Hawkins	McKissack	Rosson
Cates	Hawn	Mengden	Salem
Cayness	Haynes	Moncrief	Salter
Clark	Head	Moore, A.	Sanchez
Cobb	Heatly	Moore, G.	Santiesteban
Cole	Hendricks	Moore, T.	Schulle

Semos	Slider	Truan	Wayne
Shannon	Smith	Tupper	Wieting
Sherman	Solomon	Uher	Williams
Silber	Spurlock	Vale	Williamson
Simmons	Stewart	Von Dohlen	Wolff
Slack	Swanson	Ward	Wyatt

Absent

Atwood Finney

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Mr. Carl Parker offered the following amendment to Committee Amendment No. 1:

Amend Committee Amendment No. 1 to HB 730 by striking all below the enacting clause and substituting the following:

Article 1.

Section 1. Article 20.02, Title 122A, Taxation-General Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"Article 20.02. Imposition of Limited Sales Tax. There is hereby imposed a limited sales tax at the rate of four percent (4%) on the receipts from the sale at retail of all taxable items within this state."

Sec. 2. Section (A), Article 20.021, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(A) Every retailer shall add the sales tax imposed by Article 20.02 of this Chapter to his sale price and when added the tax shall constitute a part of the price, shall be a debt of the purchaser to the retailer until paid, and shall be recoverable at law in the same manner as the purchase price. It is further specified that where tangible personal property is segregated in contemplation of transfer of title or possession and is thereafter to be transported by common carrier from the seller to the buyer, with the price fixed F.O.B. the seller's place of business, and with transportation charges separately stated, the tax herein imposed shall be computed only upon the basis of the charge for the tangible personal property itself, exclusive of the separately stated and independently fixed transportation charges. When the sale price shall involve a fraction of a dollar, the tax shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.12	No Tax
.13 to .37	\$.01
.38 to .62	.02
.63 to .87	.03
.88 to 1.12	.04

Provided, that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying four percent (4%) times the

amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax.

"When several taxable items are purchased together and at the same time, the tax shall be computed on the total amount of the several items less the amount paid for any article or item of tangible personal property specifically exempt under the provisions of Article 20.04 of this Chapter.

"The use of tokens or stamps for the purpose of collecting or of enforcing the collection of the tax imposed in this Chapter or for any other purpose in connection with such tax is prohibited."

Sec. 3. Section (B), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(B) Method Retailer Is to Use in Computing Tax. The limited sales tax levied under Article 20.02 shall be computed and paid to the Comptroller on the basis of the same percentage rate as is provided in Article 20.02 of this Title, applied to all receipts from the total sales of taxable tangible personal property and taxable services sold by the retailer; provided any retailer who can establish to the satisfaction of the Comptroller that fifty percent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is twelve cents (12¢) or less may exclude the receipts from such sales when reporting and paying the tax imposed by Article 20.02 of this Chapter. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the Limited Sales, Excise and Use Tax and the retailer shall be subject to assessment for back taxes, penalties and interest as provided for in this Chapter."

Sec. 4. Section (J), Article 20.05, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended to read as follows:

"(J) Commingled Tax and Receipts. Any retailer who establishes an accounting system under which the amount of tax collected pursuant to this Chapter is commingled with the receipts from the sale of taxable items may determine taxable receipts in the following manner:

"(1) He shall subtract from his total receipts the receipts from any sales which are specifically exempt from or otherwise excluded from the tax imposed by this Chapter. The remainder shall consist of the receipts from the sale of taxable items plus the tax collected pursuant to the provisions of this Chapter.

"(2) This remainder shall then be divided by 1.04. The answer resulting shall be the taxable gross receipts of the retailer for reporting purposes as prescribed by Section (B) of this Article.

"The sole purpose of this Section is to permit the widest possible latitude in the internal accounting system of retailers and to avoid requiring certain retailers to remit to the state a tax computed upon a base which already includes the tax imposed by this Chapter. Nothing herein shall be construed to relieve the retailer of the obligation and duty of collecting the tax in the specific manner prescribed by Article 20.021 of this Chapter."

Sec. 5. Subdivision (2), Subsection K, Section 2, Chapter 36, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 1066c, Vernon's Texas Civil Statutes), is amended to read as follows:

"(2) When such Limited Sales, Excise and Use Tax imposed by the State of Texas shall be at the rate of four percent (4%) on the receipts from the sale at retail of all taxable items within this state which is subject to such tax, and the Local Sales and Use Tax imposed in any city under authority of this Act shall be at the rate of one percent (1%) on the receipts from the sale of all taxable items within such city which is subject to such tax, the total gross rate of such combined taxes in such city shall be at the rate of five percent (5%) on combined taxes in such city on the receipts from the sale of all tangible personal property within such city which is subject to such taxes. When the sale price shall involve a fraction of a dollar, the taxes shall be added to the sale price upon the following schedule:

Amount of Sale	Tax
\$.01 to \$.09	No Tax
.10 to .29	\$.01
.30 to .49	.02
.50 to .69	.03
.70 to .89	.04
.90 to 1.09	.05

Provided, that for successive brackets for this schedule in this paragraph, the tax shall be computed by multiplying five percent (5%) times the amount of the sale. Any fraction of one cent (\$.01) which is less than one half of one cent (\$.005) of tax shall not be collected. Any fraction of one cent (\$.01) of tax equal to one half of one cent (\$.005) or more shall be collected as a whole cent (\$.01) of tax.

"Provided, however, that any retailer who can establish to the satisfaction of the Comptroller that fifty percent (50%) or more of his receipts from the sale of tangible personal property and taxable services arise from individual transactions where the total sales price is nine cents (\$.09) or less may exclude the receipts from such sales when reporting and paying the tax imposed under this Act and the Limited Sales, Excise and Use Tax imposed by the State of Texas. No retailer shall avail himself of this provision without prior written approval of the Comptroller. The Comptroller shall grant such approval when he is satisfied that the retailer qualifies on the basis set forth in this Section and when the retailer has submitted satisfactory evidence that he can and will maintain records adequate to substantiate the exclusion herein authorized. Any attempt on the part of any retailer to exercise this provision without prior written approval of the Comptroller shall be deemed to be a failure and refusal to pay the taxes imposed by this Act and the Limited Sales, Excise and Use Tax Act and the retailer shall be subject to assessment for

both taxes, penalties and interest as provided for in this Act and the Limited Sales, Excise and Use Tax Act."

Article 2.

Section 1. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding Chapter 34 to read as follows:

"Chapter 34. Corporate Profits Tax.

"Article 34.01 Definitions. In this chapter, unless the context requires a different definition:

"(1) 'Business income' means income arising from transactions, activities, and sources in the regular course of the taxpayer's business and includes income from tangible and intangible property if the acquisition, rental, management, and disposition of the property constitutes integral parts of the taxpayer's regular business operations.

"(2) 'Commercial domicile' means the principal place from which the trade or business of the taxpayer is directed or managed.

"(3) 'Comptroller' means the comptroller of public accounts.

"(4) 'Compensation' means any form of remuneration as defined in Section 3401(a) of the internal revenue code.

"(5) 'Corporation' means, in addition to an incorporated entity, an association, trust, or any unincorporated organization which is defined as a corporation in the internal revenue code.

"(6) 'Domestic insurer' in this chapter shall mean the same as 'domestic company' in Section 5, Article 3.01, Texas Insurance Code.

"(7) 'Financial institution' means any bank, trust company, building and loan or savings and loan association, or industrial bank.

"(8) 'Financial organization' means a bank, industrial bank, trust company, building and loan or savings and loan association, credit union, safety and collateral deposit company, regulated investment company as defined in Section 851 and the following sections of the internal revenue code, under whatever authority organized, and any other association, joint stock company, or corporation at least 90 percent of whose assets consist of intangible personal property and at least 90 percent of whose gross income consists of dividends or interest or other charges resulting from the use of money or credit.

"(9) 'Gross income' means gross income as defined in the internal revenue code.

"(10) 'Internal revenue code' means the United States Internal Revenue Code of 1954, as amended, and in effect on the date of the passage of this Act.

"(11) 'Net profits' means the net gain from the operation of a business, profession, or enterprise, after provision for all costs and expenses incurred in the conduct thereof, determined on either a cash or accrual

method, on the same basis as provided for in the internal revenue code for federal income tax purposes, but without deduction of any taxes imposed on or measured by income including taxes imposed by this Act and without deduction of net operating loss carry-over or capital loss carry-over sustained prior to January 1, 1972.

"(12) 'Nonbusiness income' means all income other than business income.

"(13) 'Person' means any corporation or receiver, and the plural as well as the singular number.

"(14) 'Resident' means a corporation organized under the laws of this state.

"(15) 'Sales' means all gross receipts of the taxpayer not allocated under Sections 34.06 to 34.09.

"(16) 'State' means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any foreign country or political subdivision thereof.

"(17) 'Tax' includes interest and penalties, unless the intention to give it a more limited meaning is disclosed by the context.

"(18) 'Tax year' or 'taxable year' means the calendar year, or the fiscal year ending during such calendar year, upon the basis of which taxable income is computed under this Act. In the case of a return made for a fractional part of a year, the term shall mean the period for which such tax return is made. Except for the first return required by this Act, any taxpayer's tax year shall be for the same period as is covered by his federal income tax return.

"(19) 'Taxpayer' means any person subject to the taxes imposed by this Act.

"(20) 'Taxable income' or 'net income' means, unless specifically defined otherwise in this Act, taxable income as defined in the internal revenue code for the subject taxpayer for federal income tax purposes, subject to any adjustment resulting from the election in Article 34.20 but without deduction or credit for any tax on or measured by net income.

"(21) 'Taxable income' in the case of a corporation other than a financial institution means:

"(a) Net profits as defined in this Act subject to the following adjustments:

"(i) subtraction of interest income derived from obligations of the United States government which the state is prohibited from subjecting to a net income tax to the extent otherwise included in gross income;

"(ii) subtraction of income, war profits, and excess profits taxes, imposed by a foreign country or possession of the United States, allocable to income included in taxable net income, any part of which would be allowable as a deduction in determining federal taxable income under the applicable provisions of the internal revenue code; and

"(iii) addition of interest income derived from obligations of states other than Texas.

"(22) 'Taxable income' in the case of a financial institution means net profits as defined in this chapter plus interest or dividends on obligations or securities of any state or public authority other than Texas.

"Article 34.02 Imposition of Tax. (a) For receiving, earning, or otherwise acquiring income from any sources whatsoever there is levied and imposed on every corporation except a financial institution a tax of four percent of the taxable income as defined in Article 34.01, Section (21), subject to the source and attribution rules contained in this chapter.

"(b) There is levied and imposed upon every financial institution a tax measured by four percent of taxable income as defined in Article 34.01, Section (22), subject to the applicable source and attribution rules contained in this chapter. If the application of this tax to national banking associations is held to be invalid by final judicial action, then there shall be no tax levied or imposed by this article on state banks, including industrial banks and trust companies.

"Article 34.03 Unincorporated Organizations Taxable as Corporations for Federal Income Tax Purposes; Corporations, Elections as to Taxable Status. (a) An association or trust or other unincorporated organization which is taxable as a corporation pursuant to the internal revenue code for federal income tax purposes shall be taxable under this chapter as a corporation.

"(b) A corporation which has filed a proper election under Subchapter S of the internal revenue code shall not be subject to the tax imposed by this Act with respect to the taxable years for which such election is in effect. Each participant shall include his proportionate share of the taxable income whether or not distributed and whether or not distributable.

"Article 34.04 Taxable Income Attributable to Texas. (a) The taxable income of a taxpayer attributable to Texas shall be that portion of the taxpayer's total taxable income as allocated and apportioned to this state as provided in this chapter.

"(b) In the case of taxable income of a taxpayer whose income-producing activities are confined solely to this state, the entire taxable income of such taxpayer shall be allocated to this state, except as otherwise expressly provided in this chapter.

"(c) Any taxpayer having income which is taxable both within and without this state shall allocate and apportion his net income as provided in this chapter.

"Article 34.05 Taxability in Another State, Definition. For purposes of allocation and apportionment of income from business activity under this chapter, a taxpayer is taxable in another state if (a) in that state he is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business or a corporate stock tax, or (b) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not.

"Article 34.06 Net Rents and Royalties from Realty or Personalty (a)

Net rents and royalties from real property located in this state are allocable to this state.

"(b) Net rents and royalties from tangible personal property are allocable to this state:

"(1) if and to the extent that the property is utilized in this state; or

"(2) in their entirety if the taxpayer is a resident of this state or has a commercial domicile in this state and the taxpayer is not organized under the laws of or taxable in the state in which the property is utilized.

"(c) The extent of utilization of tangible personal property in a state is determined by multiplying the rents and royalties by a fraction, the numerator of which is the number of days of physical location of the property in the state during the rental or royalty period in the taxable year and the denominator of which is the number of days of physical location of the property everywhere during all rental or royalty periods in the taxable year. If the physical location of the property during the rental or royalty period is unknown or unascertainable by the taxpayer, tangible personal property is utilized in the state in which the property was located at the time the rental or royalty payer obtained possession.

"Article 34.07 Capital Gains and Losses. (a) Capital gains and losses from sales or exchanges of real property located in this state are allocable to this state.

"(b) Capital gains and losses from sales or exchanges of tangible personal property are allocable to this state if:

"(1) the property had a situs in this state at the time of the sale; or

"(2) the taxpayer is a resident of this state or has a commercial domicile in this state and the taxpayer is not taxable in the state in which the property had a situs.

"(c) Capital gains and losses from sales or exchanges of intangible personal property are allocable to this state if the taxpayer is a resident of this state or has a commercial domicile in this state.

"Article 34.08 Interest and Dividends. Interest and dividends are allocable to this state if the taxpayer is a resident of this state or has a commercial domicile in this state.

"Article 34.09 Patent and Copyright Royalties. (a) Patent and copyright royalties are allocable to this state:

"(1) if and to the extent that the patent or copyright is utilized by the payer in this state; or

"(2) if and to the extent that the patent or copyright is utilized by the payer in a state in which the taxpayer is not taxable and the taxpayer is a resident of this state or has a commercial domicile in this state.

"(b) A patent is utilized in a state to the extent that it is employed in production, fabrication, manufacturing, or other processing in the state or to the extent that a patented product is produced in the state. If the

basis of receipts from patent royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the patent is utilized in this state if the taxpayer is a resident or has a commercial domicile in this state.

"(c) A copyright is utilized in a state to the extent that printing or other publication originates in the state. If the basis of receipts from copyright royalties does not permit allocation to states or if the accounting procedures do not reflect states of utilization, the copyright is utilized in this state if the taxpayer is a resident or has a commercial domicile in this state.

"Article 34.10 Business Income not from Transportation Services, Domestic Insurers, and Financial Organizations. All business income, other than income from transportation services, domestic insurers, and financial organizations, shall be apportioned to this state by multiplying the income by a fraction, the numerator of which is the property factor plus the payroll factor plus the sales factor, and the denominator of which is three.

"Article 34.11 Property Factor. (a) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in this state during the tax period and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used during the tax period.

"(b) Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight times the net annual rental rate. Net annual rental rate is the annual rental rate paid by the taxpayer less any annual rental rate received by the taxpayer from sub-rentals.

"(c) The average value of property shall be determined by averaging the values at the beginning and ending of the tax period but the Comptroller may require the averaging of monthly values during the tax period if reasonably required to reflect properly the average value of the taxpayer's property.

"Article 34.12 Payroll Factor. (a) The payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation paid everywhere during the tax period.

"(b) Compensation is paid in this state if:

"(1) the individual's service is performed entirely within the state; or

"(2) the individual's service is performed both within and without the state, but the service performed without the state is incidental to the individual's service within the state; or

"(3) some of the service is performed in the state and (i) the base of operations, or if there is no base of operations, the place from which the service is directed or controlled is in the state, or (ii) the base of operations or the place from which the service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

"Article 34.13 Sales Factor. (a) The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax period, and the denominator of which is the total sales of the taxpayer everywhere during the tax period.

"(b) Sales of tangible personal property are in this state if:

"(1) the property is delivered or shipped to a purchaser, other than the United States government, within this state regardless of the f.o.b. point or other conditions of the sale; or

"(2) the property is shipped from an office, store, warehouse, factory, or other place of storage in this state and (i) the purchaser is the United States government or (ii) the taxpayer is not taxable in the state of the purchaser.

"(c) Sales, other than sales of tangible personal property, are in this state if:

"(1) the income-producing activity is performed in this state; or

"(2) the income-producing activity is performed both in and outside this state and a greater proportion of the income-producing activity is performed in this state than outside this state, based on costs of performance.

"Article 34.14 Domestic Insurers. The taxable income of a domestic insurer doing business both within and without the state or partly within or without the state shall be that portion of the net income of the taxpayer that the gross direct premiums received for insurance upon property or risk in this state, deducting premiums upon policies not taken and returned premiums on canceled policies from Texas bears to the gross direct premiums received for insurance upon property or risk deducting premiums upon policies not taken and returned premiums on canceled policies everywhere.

"Article 34.15 Transportation. (a) In the case of such taxable income other than that derived from the transportation of oil or gas by pipeline, that portion of the net income of the taxpayer derived from transportation services wherever performed that the revenue miles of the taxpayer in Texas bear to the revenue miles of the taxpayer everywhere. A revenue mile means the transportation for a consideration or one net ton in weight or one passenger the distance of one mile. The taxable income attributable to Texas sources in the case of a taxpayer engaged in the transportation both of property and of individuals shall be that portion of the entire net income of the taxpayer which is equal to the average of his passenger miles and ton mile fractions, separately computed and individually weighted by the ratio of gross receipts from passenger transportation to total gross receipts from all transportation, and by the ratio of gross receipts from freight transportation to total gross receipts from all transportation, respectively. If it is shown to the satisfaction of the Comptroller that the foregoing information is not available or cannot be obtained without unreasonable expense to the taxpayer, the Comptroller may use such other data which may be available and which in the opinion of the Comptroller will result in an equitable allocation of such receipts to this state.

"(b) In the case of taxable income derived from the transportation of oil by pipeline, that portion of the net income of the taxpayer derived from the pipeline transportation of oil everywhere that the barrel miles transported in Texas bear to the barrel miles transported by the taxpayer everywhere.

"(c) In the case of taxable income derived from the transportation of gas by pipeline, net income attributable to Texas shall be that portion of the taxable income of the taxpayer derived from the pipeline transportation of gas everywhere that the thousand cubic feet miles transported in Texas bear to the thousand cubic feet miles transported by the taxpayer everywhere.

"Article 34.16 Financial Organizations. The taxable income of a financial organization attributable to Texas sources shall be taken to be:

"(1) in the case of taxable income of a taxpayer whose income-producing activities are confined solely to this state, the entire net income of such taxpayer; or

"(2) in the case of taxable income of a taxpayer who conducts income-producing activities as a financial organization partially within and partially without this state, that portion of its net income as its gross business in this state is to its gross business everywhere during the period covered by its return, which portion shall be determined as the sum of:

"(i) fees, commissions, or other compensation for financial services rendered within this state;

"(ii) gross profits from trading in stocks, bonds, or other securities managed within this state;

"(iii) interest and dividends received within this state;

"(iv) interest charged to customers at places of business maintained within this state for carrying debit balances of margin accounts, without deduction of any costs incurred in carrying such accounts; and

"(v) any other gross income resulting from the operation as a financial organization within this state, divided by the aggregate amount of such items of the taxpayer everywhere.

"Article 34.17 Sales Within Designated Volume and Without Ownership or Renting Realty or Tangible Personalty. (a) If the taxpayer's only activities within this state consist of sales and do not include owning or renting real estate or tangible personal property and whose dollar volume of gross sales made during the tax year within the state is not in excess of \$100,000 the taxpayer may elect for that year:

"(1) to report and pay a tax on net income arrived at by multiplying total sales in this state for the taxable year by the ratio of net income from operations to total sales as reported on his federal income tax return for the same taxable year; or

"(2) report and pay a tax of two-fifths of one percent on total sales in this state, whichever method reflects the lesser tax liability.

"(b) The election is not available for any taxable year for which a consolidated return is required.

"Article 34.18 Separate Accounting; Exclusion of Factors, Inclusion of Additional Factors; Other Methods; Alternative Methods Approval. (a) if the allocation and apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this state, the taxpayer may petition for or the Comptroller may require, in respect to all or any part of the taxpayer's business activity, if reasonable:

"(1) separate accounting;

"(2) the exclusion of any one or more of the factors;

"(3) the inclusion of one or more additional factors which will fairly represent the taxpayer's business activity in this state; or

"(4) the employment of any other method to effectuate an equitable allocation and apportionment of the taxpayer's taxable income.

"(b) An alternative method will be effective only with approval by the Comptroller.

"Article 34.19 Person Exempt From Federal Income Tax, Exceptions; Withholding and Information Returns. (a) A person who is exempt from federal income tax pursuant to the provisions of the internal revenue code shall be exempt from the tax imposed by this chapter except:

"(1) an organization included under Sections 501(c) (4), 501(c) (12) and 501(c) (16) of the internal revenue code; and

"(2) the unrelated taxable business income of an exempt person as determined under the provisions of the internal revenue code.

"(b) Nothing in this section shall exempt any person from the withholding and information return provisions of this chapter.

"Article 34.20 Recomputation of Taxable Income, Exclusion of Proportional Gain or Loss, Election. (a) A taxpayer subject to the tax levied by Article 34.02 and whose income received after December 31, 1971, is increased or diminished by the disposition of an asset acquired before January 1, 1972, may elect to recompute taxable income by excluding therefrom the proportional gain or loss incurred prior to January 1, 1972. Taxpayers so electing shall be subject to a tax on taxable income thus recomputed at the rates imposed by this chapter. An election so made shall include all items of gains or losses realized during the taxable year.

"(b) The proportion of gain or loss occurring after December 31, 1971, to total gain or loss is equal to the proportion the number of months after December 31, 1971, to date of disposition bears to the number of months from date of acquisition to date of disposition.

"Article 34.21 Form and Contents of Return; Extension of Time for Filing; Interest; Joint Returns. (a) The taxpayer on or before the due date set for the filing of any return or the payment of any tax, except as otherwise provided herein, shall make out a return in the form and content

as prescribed by the Comptroller, verify the same, and transmit it, together with his remittance of the amount of the tax, to the Comptroller.

"(b) The Comptroller, upon application of the taxpayer and for good cause shown, may extend under conditions prescribed by him the time for filing the annual or final return required by this chapter, but interest at the rate of six percent per annum shall be added to the amount of tax unpaid for the period of the extension. The Comptroller may require a tentative return and payment of an estimated tax.

"(c) When the taxpayer has been granted an extension or extensions of time within which to file his final federal return for any taxable year, the filing of a copy of such extension or extensions shall automatically extend the due date of the final return under this chapter for an equivalent period plus 60 days.

"Article 34.22 Information Required in Returns by Corporations and Financial Institutions. Every corporation and financial institution required to make a final return for any taxable period under the provisions of the internal revenue code shall render on or before the 15th day of the fourth month following the close of such taxable period to the Comptroller a return setting forth:

"(1) the amount of taxable income reported on the return made to the United State internal revenue service for federal income tax purposes, and as provided in the definitions contained in this chapter and the rules and regulations issued thereunder, and the portion thereof attributable to Texas;

"(2) the amount of tax due under this chapter, less credits claimed against the tax; and

"(3) such other information for the purpose of carrying out the provisions of this chapter as may be prescribed by the Comptroller.

"Article 34.23 Copies of Federal Returns and Supporting Schedules; Notice of Changes in Federal Returns, Deficiencies and Overpayments. (a) Any taxpayer required to file a return under this chapter may be required to furnish a true and correct copy of any tax return or portion of any tax return and supporting schedules which he has filed under the provisions of the internal revenue code.

"(b) Every taxpayer shall notify the Comptroller in writing of any alteration in, or modification of, his federal income tax return which affects his taxable income under this Act and of any similarly related recomputation of tax or determination of deficiency under the provisions of the internal revenue code. The notice shall be given in writing within 20 days after the alteration, modification, recomputation, or determination of deficiency. If the Comptroller finds upon all the facts that an additional tax under this chapter is owing, the taxpayer shall thereupon pay the additional tax. If the Comptroller finds that the taxpayer has overpaid the tax imposed by this chapter, a credit or refund of the overpayment shall thereupon be made as provided in Article 34.32.

"Article 34.24 Combined Reports, Taxpayers Owning or Controlling One or More Other Corporations; Intercorporate Transactions, Computation of

Net Income, Exemptions, Deductions. In the discretion of the Comptroller, any taxpayer which owns or controls either directly or indirectly substantially all the capital stock of one or more other corporations, or substantially all the capital stock of which is owned or controlled either directly or indirectly by one or more other corporations, or by interests which own or control either directly or indirectly substantially all the capital stock of one or more corporations may be required or permitted to make a report on a combined basis covering any such other corporations and setting forth such information as the Comptroller may require. In addition, a combined report may be made at the election of any two or more taxpayers provided the ownership or control requirements contained in the preceding sentence are satisfied and such report sets forth such information as the Comptroller may require. No combined report covering any corporation not a taxpayer shall be required unless the Comptroller deems such a report necessary because of intercompany transactions in order to properly reflect the tax liability imposed by this chapter. In case of a combined report, the tax shall be measured by the combined net income of all the corporations included in the report. In computing net income, intercorporate transactions including dividends shall be eliminated. If the computation of the tax due on a combined return involves the use of any of the formulas set forth in this chapter, then the factors used in the formulas shall be the combined totals of the factors for each corporation included in the combined return. The exemptions and deductions permitted under this chapter shall be taken in the same manner as if each corporation filed a separate return.

“Article 34.25 Adjustment of Income and Deductions; Elimination of Assets. If it appears to the Comptroller that any agreement, understanding, or arrangement exists between the taxpayer and any other corporation or any person or firm whereby the activity, business, or income of the taxpayer within the state is improperly or inaccurately reflected, the Comptroller in such manner as he determines may adjust items of income and deductions and eliminate assets in computing any allocation percentage: Provided, only that any income directly traceable thereto be also excluded from net income so as equitably to determine the tax. Where any taxpayer conducts its activity or business under any agreement, arrangement or understanding in such manner as either directly or indirectly to benefit its members or stockholders, or any of them, or any person directly or indirectly interested in such activity or business by entering into any transaction at more or less than a fair price which, but for such agreement, arrangement, or understanding, might have been paid or received therefor, or any taxpayer, a substantial portion of whose capital stock is owned either directly or indirectly by another corporation, enters into any transaction with such other corporation on such terms as to create an improper loss of net income, the Comptroller may include in the net income of the taxpayer, the fair profits which, but for such agreement, arrangement, or understanding, the taxpayer might have derived from such transaction.

“Article 34.26 Tax Deficiencies, Notice, Interest, Penalties for Negligence or Intentional Disregard and for Fraud; Tax Overpayments, Credits, Refunds. (a) If it appears, either from the examination of the return or from the examination authorized by Article 34.28 that the taxpayer has not satisfied his liability under this chapter, the tax shall be determined by the department and the taxpayer notified thereof. If the amount paid exceeds the correct amount of tax, the excess so paid may be credited against a subsequent tax or shall be refunded if requested by the taxpayer.

"(b) If the amount paid is less than the amount which should have been paid, the deficiency, together with interest thereon at the rate of one-half of one percent per month from the time the tax was due, shall become due and payable after notice and hearing as provided in this chapter.

"(c) If any part of the deficiency is due to negligence or intentional disregard of this chapter or of the authorized rules and regulations of the Comptroller but without intent to defraud, there shall be added as a penalty 10 percent of the total amount of the deficiency in the tax, and interest shall be collected at the rate of one percent per month on the amount of such deficiency in the tax from the time it was due, which interest and penalty shall become due and payable after notice and hearing as provided in this chapter.

"(d) If any part of the deficiency is due to a fraudulent intent to evade the tax, then there shall be added as a penalty 100 percent of the deficiency, and the whole amount of tax unpaid, together with the penalty, shall become due and payable after notice and hearing as provided in this chapter, and an additional one percent per month on the tax shall be added from the date the tax was due until paid.

"Article 34.27 Assessment of Tax Against Person Failing or Refusing to Timely File Return, Notice, Penalties. (a) If any person fails or refuses to file a return within the time specified in this chapter, the Comptroller as soon as possible shall assess the tax against the person and shall notify him of the amount thereof as provided in this chapter.

"(b) In case of failure or refusal to file any return or pay the tax required by this chapter, within the time prescribed by this chapter there shall be added as a penalty five percent of the tax if the failure is for not more than one month or a fraction of one month, with an additional five percent. In addition to the penalty, there shall be added interest, at the rate of one percent per month on the amount of the tax from the time the tax was due until the date of payment. When a return or remittance is filed after such time and it is shown to the satisfaction of the department that the failure to file was due to reasonable cause and not to willful neglect, no such penalty shall be imposed.

"Article 34.28 Assessments; Information as Basis, Power to Obtain; Notice; Finality; Prima Facie Correct; Burden of Proof; Records; Statements Under Oath. (a) if any person fails or refuses to make a return, either in whole or in part, or if the Comptroller has reason to believe that any return made does not supply sufficient information for an accurate determination of the amount of tax due, the Comptroller may obtain information on which to base an assessment of the tax. The Comptroller by its duly authorized agents may examine the books, records and papers and audit the accounts of any person or any other records pertaining to the tax. As soon as possible after procuring such information as may be found to be available, the Comptroller shall assess the tax determined to be due and shall notify the person assessed.

"(b) The assessment by the Comptroller shall be final.

"(c) Every person liable for any tax imposed under this Act shall keep and maintain accurate records in such form as to make it possible to determine the tax due hereunder whenever in the judgment of the Comptroller

it is necessary, it may require any person, by notice served upon him, to make a return, render under oath such statements or keep such records as the Comptroller deems sufficient to show whether or not the person is liable to tax under this chapter. If the taxpayer fails to file a return or to keep and maintain proper, accurate, and complete records as prescribed in this section, the Comptroller may assess, upon such information as is available or may come into possession of the Comptroller, the amount of the tax due from the taxpayer. The assessment after notice and hearing as provided in this chapter shall be deemed to be prima facie correct for the purpose of this chapter and the burden of proof of refuting the assessment shall be upon the taxpayer.

"Article 34.29 Limitations, Assessments of Deficiencies, Interest, or Penalties; Fraud; Suspension of Period of Limitations. (a) No deficiency, interest or penalty shall be assessed for any year after the expiration of three years from the date set for the filing of the annual return for each year or the date the return was filed whichever is later. If any person subject to tax under this chapter fraudulently conceals any liability for the tax or any part thereof, the Comptroller within two years of the discovery of the fraud shall assess the tax with interest and penalties as provided in this chapter, computed from the date on which the tax liability originally accrued, and the tax, penalties, and interest shall become due and payable after notice and hearing as provided in this chapter, anything herein contained to the contrary notwithstanding.

"(b) The running of the statute of limitations shall be suspended for the period pending final determination of litigation of or hearing on a taxpayer's federal income tax return or of the return required by this chapter, or in the event any notice is required under the provisions of Article 34.23 and for one year thereafter.

"(c) The running of the statute of limitations shall be suspended for the period for which the taxpayer and the Comptroller have consented in writing that the period be suspended. The period so extended may be further extended by subsequent consent in writing made before the expiration of the extended period.

"(d) The running of the statute of limitations shall be suspended for any taxable year for which no return has been filed.

"Article 34.30 Notice of Intent to Levy Tax; Notice of Demand for Hearing; Hearing, Time, Place, Decision and Order; Appeals; Action for Amount Paid, Limitations, Procedure. (a) In carrying out the provisions of this chapter, the Comptroller after determining the amount of tax due from any taxpayer shall give notice to the taxpayer of his intent to levy the tax. The taxpayer, if he so desires and serves notice thereof upon the Comptroller within 20 days, may demand a hearing on the question of his liability for the assessment. Thereupon, the Comptroller shall set a time and place for hearing and shall give the taxpayer reasonable notice thereof.

"(b) The taxpayer shall be entitled to appear before the Comptroller and be represented by counsel and present testimony and argument. After the hearing the Comptroller shall render its decision in writing and by order levy any tax, interest and penalty found by it to be due and payable.

"(c) Any taxpayer aggrieved by any determination of tax liability made by the Comptroller may appeal to the district court of Travis County. The action shall be commenced within six months after payment of the tax or after the adverse determination by the Comptroller of the validity of the taxpayer's claim for refund, whichever occurs later, and shall be conducted in accordance with the statutes and rules of procedure concerning actions at law not inconsistent with the provisions of this chapter.

"Article 34.31 Jeopardy Assessments. If the Comptroller finds that a person liable for tax under any provisions of this chapter designs quickly to depart from the state or to remove his property therefrom, or to conceal himself or his property herein; or to do any other act tending to prejudice or to render wholly or partly ineffectual proceedings to collect the tax unless the proceedings are brought without delay, the Comptroller shall give notice of such findings to the person, together with a demand for an immediate return and immediate payment of the tax. Warrant may issue immediately upon issuance of a jeopardy assessment. Thereupon, the tax shall become immediately due and payable. If the person is not in default in making any return or paying any tax prescribed by this chapter, and furnishes evidence satisfactory to the Comptroller under regulations prescribed by it that he will duly return and pay the tax to which the Comptroller's finding relates, then the tax shall not be payable prior to the time otherwise fixed for payment.

"Article 34.32 Credits; Refunds, Petition, Return as Claim, Certification. (a) The Comptroller shall credit or refund all overpayments of taxes, all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that are found unjustly assessed or excessive in amount, or wrongfully collected.

"(b) Any taxpayer who has paid a tax which he claims was not due under this chapter may, on or before the expiration date of three years from the date set for the filing of the annual or final return for such year or the date the tax was paid, whichever is later, and not after, petition the Comptroller in writing to refund the amount so paid. If the annual return reflects an overpayment or credits in excess of the tax, the declaration thereof on the return constitutes a claim for refund. If the Comptroller agrees that the taxpayer's claim is valid, the amount of overpayment, at the request of the taxpayer, shall be refunded to the taxpayer, or credited against any current or subsequent tax liability.

"Article 34.33 Corporate Dissolution or Withdrawal, Closing of Decedent's Estate, Sale of Business or Stock of Goods, Cessation of Business Activity Tax Collection. (a) The secretary of state shall withhold the issuance of any certificate of dissolution of any corporation organized under the laws of this state, or of any certificate of withdrawal in the case of a corporation organized under the laws of another state and admitted to do business in this state, until the receipt of a notice from the Comptroller to the effect that all taxes levied under this chapter against the corporation have been paid, or until it is notified by the Comptroller that the applicant is not indebted for any taxes levied hereunder.

"(b) If any person liable for a tax levied by this chapter sells out his business or stock of goods or ceases his business activity, his successor or succeeding successors shall withhold sufficient of the purchase money to satisfy the amount of tax which may be due and unpaid until the former

owner produces a receipt for payment of the tax from the Comptroller or a certificate stating that no tax is due. Any successor who fails to withhold purchase money is liable for any tax accruing by virtue of the business of the former owner.

"Article 34.34 Records, Adequacy, Period, Examination, Penalties. Every person shall keep such records, books, and accounts as may be necessary to determine the amount of tax for which it is liable under the provisions of this chapter and as the Comptroller may require for a period of six years. The records, books, and accounts shall be open for examination at any time during regular business hours of the taxpayers by the Comptroller and his agents.

"Article 34.35 Penalties for Violations; Perjury. It shall be unlawful for any person to refuse to make the return required by this chapter, or to make, aid, abet, or assist another in making, any false or fraudulent return or false statement in any return required by this chapter with intent to defraud the state or to evade the payment of the tax, or any part thereof, imposed by this chapter; or for any person to aid, abet, or assist another in any attempt to evade the payment of the tax, or any part thereof, imposed by this chapter; or for any person to make or permit to be made for himself or for any company or association any false return or any false statement in any return required in this chapter, with the intent to evade or assist in evading the payment of any tax. Any person violating any of the provisions of this chapter is guilty of a misdemeanor and shall be fined not more than \$1,000. In addition to the foregoing penalties, any person who knowingly swears to or verifies any false or fraudulent statement, with the intent to defraud or to aid, abet, or assist in defrauding the state, is guilty of perjury and shall be punished in the manner provided by law.

"Article 34.36 Divulgence of Information, Administrative or Enforcement Purposes; Reciprocal Agreements. Any officer, agent, or employee of this state or of any department or agency of this state may divulge any information set forth or disclosed in any return or report filed under this chapter or by any investigation or audit authorized hereunder to any officer or department of the state government when it is required for the more effective administration or enforcement of the laws of this state, to any proper officer of the United States treasury department, and to any proper officer of any other state imposing a tax of a substantially similar nature and reciprocating in this privilege. The Comptroller may enter into reciprocal agreements with the United States treasury or taxing officials of other states for the enforcement, collection, and exchange of data in connection with the administration of this chapter.

"Article 34.37 Administration by Department, Forms, Rules. The tax imposed by this chapter shall be administered by the Comptroller. The comptroller shall prescribe forms for use by taxpayers and shall promulgate rules in conformity with this chapter for the maintenance by taxpayers of records, books, and accounts, and for the computation of the tax, the manner and time of changing or electing accounting methods and of exercising the various options contained in this chapter, the making of returns, and the ascertainment, assessment, and collection of the tax imposed hereunder. The rules insofar as possible without being inconsistent with the provisions of this chapter, shall follow the rulings of the United States internal revenue service with respect to the federal income tax, and

the Comptroller may adopt as a part of such rules any portions of the internal revenue code or ruling, in whole or in part.

"Article 34.38 Tax Additional to Other Taxes; Disposition of Tax Proceeds; Tax Remittances, Form, Finality. The tax imposed by this chapter is in addition to all other taxes for which the taxpayer may be liable and the proceeds derived from the tax shall be credited to the general fund.

"Article 34.39 Corporations and Financial Institutions Short Tax Year Election. All corporations and financial institutions subject to provisions of this chapter, may elect to compute their tax for the first taxable year of less than 12 months in accordance with any of the following methods:

"(1) the tax may be computed as if this chapter had been effective on the first day of the taxpayer's annual accounting period and the amount so computed shall be multiplied by a fraction, the numerator of which is the number of months in the taxpayer's first taxable year, and the denominator of which is 12; or

"(2) the tax may be computed by determining the taxable income in the first taxable year in accordance with an accounting method, satisfactory to the Comptroller which reflects the actual taxable income attributable to the period.

"Article 34.40 Relationship to Internal Revenue Code. (a) Any term used in this chapter shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes unless a different meaning is clearly required. Any reference in this chapter to the internal revenue code shall include other provisions of the laws of the United States relating to federal income taxes.

"(b) It is the intention of this chapter that the income subject to tax be the same as taxable income as defined and applicable to the subject taxpayer in the internal revenue code, except as otherwise provided in this chapter."

Article 3

Section 1. Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is amended by adding a Chapter 31 to read as follows:

"Chapter 31. Occupation Tax on Sellers of Jet Fuel.

"Article 31.01 Definitions. In this chapter:

"(1) 'Person' means an individual, firm, corporation, association, or other private entity.

"(2) 'Seller' means any person engaged in the business of selling jet fuel for consumption and use in aircraft, but does not include a person who sells fuel for resale only.

"(3) 'Jet fuel' means any petroleum product, other than fuel taxed under Chapter 9 or Chapter 10 of this Title, used as fuel to propel any type of aircraft.

"Article 31.02 Tax Imposed. There is imposed an occupation tax on every seller of jet fuel for use and consumption and not for resale.

"Article 31.03 Rate of Tax. The tax imposed by this chapter is at the rate of five cents for each gallon of jet fuel sold in this state by a seller for use and consumption in any aircraft except aircraft owned and operated by the United States or any military unit of the United States or this state.

"Article 31.04 Report and Payment of Tax. (a) On or before the 25th day of each month each seller shall deliver to the office of the Comptroller a verified report showing the number of gallons of jet fuel sold in this state for use and consumption during the preceding calendar month.

"(b) The Comptroller shall prescribe the form of the report and may require additional information necessary to enforce the tax imposed by this chapter.

"(c) The seller shall deliver to the Comptroller with the report cash or a certified check or cashier's check in the amount of the tax due for the period covered by the report.

"(d) A person who fails to file when due a report required by the Comptroller under this article shall pay to the Comptroller within 10 days after demand a penalty of \$50 for each failure.

"(e) Interest accrues on past-due taxes at the rate of six percent per annum.

"Article 31.05 Records. Each seller shall keep in Texas for a period of two years a complete record of the number of gallons of jet fuel sold in this state for use and consumption. The record may be inspected by the Comptroller or Attorney General, or one of their authorized representatives, on reasonable notice during normal business hours.

"Article 31.06 Failure to File Report. (a) No seller, or agent, officer, or employee of a seller, may:

"(1) knowingly file a false or incomplete report required by Article 31.04 of this chapter;

"(2) destroy, mutilate, conceal, or falsify any of the books or records of the seller; or

"(3) refuse to permit the Comptroller or the Attorney General, or one of their authorized representatives, to inspect or audit any books or records of the seller.

"(b) Any seller, or agent, officer, or employee of a seller, who violates a provision of Subsection (a) of this article is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$500.

"Article 31.07 Failure to Pay Tax. (a) Any seller, or agent, officer, or employee of a seller who knowingly fails to pay the tax due as required by this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$5,000.

"(b) If the Comptroller believes any seller has failed to pay the full amount of tax due under this, the Comptroller may employ auditors or

other persons to audit the seller's records and, if the tax has not been paid in full, the seller shall pay the cost of the audit.

"(c) Payments for audits made under Subsection (b) of this article shall be placed in a special fund in the state treasury and used by the Comptroller to pay the costs of audits made under this chapter.

"Article 31.08 Lien on Property for Failure to Pay. All taxes, fines, and interest due by any seller under this chapter constitute a preferred lien, first and prior to any and all other existing liens, contract or statutory legal or equitable, and regardless of the time the liens originated, against all the property of the seller devoted to or used in his business.

"Article 31.09 Enforcement Fund. (a) Before any allocation of the tax collected under this chapter is made, one percent of the gross amount of the tax collected shall be placed in the state treasury in a special fund for the Comptroller's use in administering and enforcing this chapter.

"(b) The Legislature shall provide in the General Appropriations Act for expenditures from this special fund and from the auditors fund established by Article 31.07(c) of this chapter.

"(c) At the end of each biennium, or other fiscal period prescribed by the Legislature, any unexpended portion of the special fund for the administration and enforcement of this chapter shall be transferred one-fourth to the available school fund and three-fourths to the general revenue fund.

"Article 31.10 Comptroller's Rules. The Comptroller shall adopt rules:

"(1) prescribing the form of records and reports required for collecting the tax imposed by this chapter;

"(2) defining the record-keeping responsibilities of sellers;

"(3) providing auditing procedures;

"(4) providing:

"(A) for deficiency and jeopardy determinations;

"(B) for certification and refund of overpayments; and

"(C) administrative hearing procedures; and

"(5) prescribing other requirements reasonably necessary to collect the tax imposed by this chapter.

"Article 31.11 Procedure for Adopting and Amending Rules. (a) Before the Comptroller may adopt a rule under Article 31.10 of this chapter, or an amendment to an adopted rule, he must mail a copy of the proposed rule or amendment, or an informative summary of the rule or amendment, to each seller in the state.

"(b) The rule or amendment takes effect on the 30th day after the day the copy or summary is mailed unless:

"(1) the Comptroller specifies that it takes effect at a later time; or

"(2) the Comptroller rescinds the order adopting the rule or amendment.

"(c) The Comptroller may rescind, but he may not change, the order adopting a rule or amendment from the time the copy or summary is mailed until the rule or amendment takes effect. After the rule or amendment takes effect, the Comptroller may repeal or change it only by adopting an order repealing or amending it.

"(d) If the Comptroller rescinds an order for a rule or amendment, he may adopt a new rule or amendment at any time, even though the new rule or amendment is on the same subject as the rule or amendment rescinded.

"(e) The Comptroller shall supply free of charge to each seller in the state a copy of the rules of the Comptroller, and of all changes in the rules.

"Article 31.12 Disposition of Revenue. All proceeds from the collection of this tax after deduction of the amount provided in Article 31.09 shall be allocated one-fourth to the available school fund and three-fourths to the general revenue fund.

"Article 31.13. Motor Fuel Used in Airplanes Taxed. (a) The tax imposed by this chapter is applicable to motor fuel used in airplanes and is imposed at the rate of five cents for each gallon at the time of the first sale.

"(b) In this article 'airplanes' includes all aircraft or devices such as helicopters that are propelled through the air.

"(c) After the effective date of this article no refunds may be made for motor fuel on which the tax has been paid and used for aircraft unless the tax was paid before the effective date of this article.

"(d) The distribution of motor fuel used in airplanes shall be as otherwise provided in this chapter.

"(e) Revenue from the tax received under this article shall be allocated one-fourth to the available school fund and three fourths to the Aeronautics Commission Fund.

"(f) The Comptroller shall make rules and regulations for the enforcement and collection of the tax on motor fuel used in airplanes."

Article 4.

Section 1. Effective May 1, 1972, Chapter 12, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is repealed. The repeal of the franchise tax as provided in this Section does not affect any obligation or debt to the state incurred before the date of repeal and the Comptroller may collect any amount due in payment of the franchise tax as though the tax were still in effect. The Comptroller shall make rules and regulations for the collection of any franchise tax accrued before the date of repeal but not paid by that date.

Sec. 2. Chapter 17, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925, as amended, is repealed.

Sec. 3. Except as otherwise provided, this Act takes effect July 1, 1971. Article 2 takes effect January 1, 1972.

Sec. 4. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

Sec. 5. The importance of this legislation and the crowded condition of the calendars in both Houses create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and this Rule is hereby suspended, and that this Act take effect and be in force as provided by Section 3 of this article, and it is so enacted.

Mr. Atwell moved to table the above amendment offered by Mr. Carl Parker.

A record vote was requested.

The motion to table prevailed by the following vote:

Yeas—80

Agnich	Earthman	McAlister	Schulle
Allen, John	Finnell	McKissack	Semos
Angly	Foreman	Mengden	Shannon
Atwell	Golman	Moncrief	Sherman
Atwood	Hanna, Joe	Moore, A.	Short
Baker	Hawkins	Moore, G.	Slack
Blanton	Hawn	Murray	Slider
Blythe	Heatly	Nabers	Solomon
Bowers	Hilliard	Newton	Spurlock
Braecklein	Holmes, T.	Nugent, J.	Swanson
Burgess	Howard	Ogg	Tarbox
Bynum	Hull	Orr	Traeger
Calhoun	Ingram	Parker, W.	Uher
Carrillo	Jones, D.	Patterson	Von Dohlen
Cates	Jones, E.	Pickens	Ward
Christian	Jones, G.	Poerner	Wayne
Clayton	Jungmichel	Poff	Wieting
Cobb	Kost	Presnal	Williamson
Craddick	Lee	Price	Wolff
Davis, H.	Lemmon	Rosson	Wyatt

Nays—61

Adams	Bigham	Cruz	Farenthold
Allen, Joe	Braun	Daniel	Finck
Allred	Caldwell	Denton	Floyd
Bass, B.	Cavness	Doran	Gammage
Bass, T.	Clark	Doyle	Garcia
Beckham	Cole	Dramberger	Grant

Hale	Kilpatrick	Nichols	Simmons
Hannah, John	Kubiak	Niland	Smith
Harding	Lewis	Parker, C.	Stewart
Harris	Ligarde	Reed	Truan
Haynes	Lombardino	Rodriguez	Tupper
Head	Longoria	Salem	Vale
Hendricks	Lovell	Salter	Williams
Holmes, Z.	Moore, T.	Sanchez	
Hubenak	Moreno	Santiesteban	
Kaster	Nelms	Silber	

Absent

Finney	Johnson	Neugent, D.
--------	---------	-------------

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Question recurring on the adoption of Committee Amendment No. 1 to HB 730 Article by Article.

Article 1 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—83

Adams	Grant	McKissack	Shannon
Allen, John	Hanna, Joe	Moncrief	Sherman
Atwell	Harding	Moore, A.	Short
Baker	Hawkins	Moore, G.	Silber
Blanton	Hawn	Murray	Slack
Braecklein	Heatly	Nabers	Slider
Burgess	Hendricks	Newton	Solomon
Bynum	Hilliard	Niland	Spurlock
Calhoun	Holmes, T.	Nugent, J.	Swanson
Carrillo	Howard	Ogg	Tarbox
Cates	Hubenak	Orr	Traeger
Cavness	Hull	Parker, W.	Tupper
Clayton	Ingram	Pickens	Uher
Cobb	Jones, D.	Poerner	Von Dohlen
Davis, H.	Jones, G.	Presnal	Ward
Doran	Jungmichel	Price	Wayne
Doyle	Kost	Rosson	Wieting
Finnell	Lemmon	Salter	Williamson
Finney	Ligarde	Sanchez	Wolff
Foreman	Lovell	Schulle	Wyatt
Golman	McAlister	Semos	

Nays—59

Agnich	Bass, B.	Bowers	Cole
Allen, Joe	Bass, T.	Braun	Craddick
Allred	Beckham	Caldwell	Cruz
Angly	Bigham	Christian	Daniel
Atwood	Blythe	Clark	Denton

Dramberger	Haynes	Longoria	Rodriguez
Earthman	Head	Mengden	Salem
Farenthold	Holmes, Z.	Moore, T.	Santiesteban
Finck	Jones, E.	Moreno	Simmons
Floyd	Kaster	Nelms	Smith
Gammage	Kilpatrick	Nichols	Stewart
Garcia	Kubiak	Parker, C.	Truan
Hale	Lee	Patterson	Vale
Hannah, John	Lewis	Poff	Williams
Harris	Lombardino	Reed	

Absent

Johnson	Neugent, D.
---------	-------------

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 2 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—89

Allen, John	Hale	McAlister	Shannon
Atwell	Hanna, Joe	McKissack	Sherman
Atwood	Harding	Moncrief	Short
Baker	Hawkins	Moore, A.	Silber
Blanton	Hawn	Moore, G.	Slack
Braecklein	Heatly	Murray	Slider
Bynum	Hendricks	Nabers	Solomon
Calhoun	Hilliard	Newton	Spurlock
Carrillo	Holmes, T.	Niland	Stewart
Cates	Howard	Nugent, J.	Swanson
Cavness	Hubenak	Orr	Tarbox
Clayton	Hull	Parker, W.	Tupper
Cobb	Johnson	Patterson	Uher
Cole	Jones, D.	Pickens	Von Dohlen
Cruz	Jones, G.	Poerner	Ward
Davis, H.	Jungmichel	Poff	Wayne
Denton	Kaster	Presnal	Wieting
Doyle	Kost	Price	Williamson
Finnell	Lemmon	Rosson	Wolff
Foreman	Ligarde	Salter	Wyatt
Garcia	Lombardino	Sanchez	
Golman	Longoria	Schulle	
Grant	Lovell	Semos	

Nays—55

Adams	Bass, T.	Burgess	Doran
Agnich	Beckham	Caldwell	Dramberger
Allen, Joe	Bigham	Christian	Earthman
Allred	Blythe	Clark	Farenthold
Angly	Bowers	Craddick	Finck
Bass, B.	Braun	Daniel	Finney

Floyd	Jones, E.	Nelms	Santiesteban
Gammage	Kilpatrick	Neugent, D.	Simmons
Hannah, John	Kubiak	Nichols	Smith
Harris	Lee	Ogg	Traeger
Haynes	Lewis	Parker, C.	Truan
Head	Mengden	Reed	Vale
Holmes, Z.	Moore, T.	Rodriguez	Williams
Ingram	Moreno	Salem	

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 3 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—100

Adams	Foreman	Ligarde	Sanchez
Allen, Joe	Garcia	Lombardino	Santiesteban
Allen, John	Golman	Longoria	Schulle
Atwell	Grant	Lovell	Shannon
Atwood	Hale	McAlister	Sherman
Baker	Hanna, Joe	McKissack	Short
Bass, B.	Harding	Moncrief	Silber
Bass, T.	Hawkins	Moore, A.	Slack
Blanton	Hawn	Moore, G.	Slider
Braecklein	Heatly	Murray	Solomon
Burgess	Hendricks	Nabers	Spurlock
Bynum	Hilliard	Newton	Stewart
Calhoun	Holmes, T.	Niland	Swanson
Carrillo	Howard	Nugent, J.	Tarbox
Cates	Hubenak	Ogg	Traeger
Cavness	Hull	Parker, W.	Truan
Clayton	Ingram	Patterson	Tupper
Cobb	Johnson	Poerner	Uher
Cole	Jones, D.	Poff	Von Dohlen
Cruz	Jones, G.	Presnal	Ward
Daniel	Jungmichel	Price	Wayne
Davis, H.	Kaster	Reed	Wieting
Doyle	Kilpatrick	Rosson	Williamson
Finnell	Kost	Salem	Wolff
Finney	Lemmon	Salter	Wyatt

Nays—43

Agnich	Craddick	Haynes	Nichols
Allred	Denton	Head	Orr
Angly	Doran	Holmes, Z.	Parker, C.
Beckham	Dramberger	Jones, E.	Pickens
Bigham	Earthman	Kubiak	Rodriguez
Blythe	Farenthold	Lee	Semos
Bowers	Finck	Lewis	Simmons
Braun	Floyd	Mengden	Smith
Caldwell	Gammage	Moore, T.	Vale
Christian	Hannah, John	Nelms	Williams
Clark	Harris	Neugent, D.	

Absent

Moreno

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 4 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—123

Adams	Farenthold	Kost	Rosson
Allen, Joe	Finnell	Kubiak	Salem
Allen, John	Finney	Lemmon	Salter
Angly	Foreman	Lewis	Sanchez
Atwell	Gammage	Ligarde	Santiesteban
Atwood	Garcia	Lombardino	Schulle
Baker	Golman	Longoria	Semos
Bass, B.	Grant	Lovell	Shannon
Bass, T.	Hale	McAlister	Sherman
Beckham	Hanna, Joe	McKissack	Short
Bigham	Hannah, John	Moncrief	Silber
Blanton	Harding	Moore, A.	Slack
Braecklein	Harris	Moore, G.	Slider
Braun	Hawkins	Moore, T.	Solomon
Burgess	Hawn	Moreno	Spurlock
Bynum	Haynes	Murray	Stewart
Caldwell	Heatly	Nabers	Swanson
Calhoun	Hendricks	Nelms	Tarbox
Carrillo	Hilliard	Newton	Truan
Cates	Holmes, T.	Nichols	Tupper
Cavness	Holmes, Z.	Niland	Uher
Clark	Howard	Nugent, J.	Vale
Clayton	Hubenak	Orr	Von Dohlen
Cobb	Hull	Parker, C.	Ward
Cole	Ingram	Parker, W.	Wayne
Cruz	Johnson	Poerner	Wieting
Daniel	Jones, D.	Poff	Williams
Davis, H.	Jones, G.	Presnal	Williamson
Denton	Jungmichel	Price	Wolff
Doran	Kaster	Reed	Wyatt
Doyle	Kilpatrick	Rodriguez	

Nays—19

Agnich	Craddick	Head	Ogg
Allred	Dramberger	Jones, E.	Patterson
Blythe	Earthman	Lee	Simmons
Bowers	Finck	Mengden	Smith
Christian	Floyd	Neugent, D.	

Present—Not Voting

Pickens	Traeger
---------	---------

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 4A to Committee Amendment No. 1 was adopted by the following vote:

Yeas—117

Adams	Farenthold	Ligarde	Salter
Allen, Joe	Finck	Lombardino	Sanchez
Allen, John	Finnell	Longoria	Santiesteban
Angly	Finney	Lovell	Schulle
Atwood	Floyd	McAlister	Shannon
Baker	Foreman	Moncrief	Short
Bass, B.	Gammage	Moore, A.	Silber
Bass, T.	Garcia	Moore, G.	Simmons
Beckham	Grant	Moore, T.	Slack
Bigham	Hale	Moreno	Slider
Braun	Hanna, Joe	Murray	Solomon
Burgess	Hannah, John	Nabers	Spurlock
Bynum	Harris	Nelms	Stewart
Caldwell	Hawkins	Neugent, D.	Swanson
Calhoun	Haynes	Newton	Tarbox
Carrillo	Heatly	Nichols	Traeger
Cates	Hendricks	Niland	Truan
Christian	Hilliard	Nugent, J.	Tupper
Clark	Holmes, T.	Ogg	Uher
Clayton	Holmes, Z.	Parker, C.	Vale
Cobb	Howard	Parker, W.	Von Dohlen
Cole	Hubenak	Patterson	Ward
Craddick	Ingram	Poerner	Wieting
Cruz	Johnson	Poff	Williams
Daniel	Jungmichel	Presnal	Williamson
Davis, H.	Kaster	Price	Wolff
Denton	Kilpatrick	Reed	Wyatt
Doran	Kost	Rodriguez	
Doyle	Kubiak	Rosson	
Dramberger	Lemmon	Salem	

Nays—26

Agnich	Cavness	Jones, D.	Pickens
Allred	Earthman	Jones, E.	Semos
Atwell	Golman	Lee	Sherman
Blanton	Harding	Lewis	Smith
Blythe	Hawn	McKissack	Wayne
Bowers	Head	Mengden	
Braecklein	Hull	Orr	

Absent

Jones, G.

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 5 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—107

Adams	Finnell	Kilpatrick	Sanchez
Allen, Joe	Finney	Kost	Santiesteban
Angly	Foreman	Lemmon	Schulle
Atwell	Gammage	Ligarde	Semos
Atwood	Garcia	Longoria	Shannon
Baker	Golman	Lovell	Sherman
Bass, T.	Grant	McAlister	Short
Beckham	Hale	McKissack	Silber
Blanton	Hannah, John	Moncrief	Slack
Braun	Harding	Moore, A.	Slider
Burgess	Harris	Moore, G.	Solomon
Bynum	Hawkins	Moreno	Spurlock
Caldwell	Hawn	Murray	Stewart
Calhoun	Haynes	Nabers	Swanson
Carrillo	Heatly	Nelms	Tarbox
Cates	Hendricks	Newton	Traeger
Cavness	Hilliard	Niland	Tupper
Clark	Holmes, T.	Nugent, J.	Uher
Clayton	Holmes, Z.	Parker, W.	Von Dohlen
Cobb	Howard	Patterson	Ward
Cole	Hubenak	Pickens	Wayne
Cruz	Hull	Poerner	Wieting
Daniel	Ingram	Poff	Williams
Davis, H.	Johnson	Presnal	Williamson
Doyle	Jones, D.	Price	Wolff
Dramberger	Jungmichel	Reed	Wyatt
Farenthoid	Kaster	Salem	

Nays—35

Agnich	Craddick	Kubiak	Parker, C.
Allen, John	Denton	Lee	Rodriguez
Allred	Doran	Lewis	Rosson
Bass, B.	Earthman	Lombardino	Salter
Bigham	Finck	Mengden	Simmons
Blythe	Floyd	Moore, T.	Smith
Bowers	Hanna, Joe	Neugent, D.	Truan
Braecklein	Head	Ogg	Vale
Christian	Jones, E.	Orr	

Present—Not Voting

Nichols

Absent

Jones, G.

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 6 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—113

Adams	Finney	Lemmon	Sanchez
Allen, Joe	Foreman	Ligarde	Santiesteban
Allen, John	Gammage	Lombardino	Schulle
Angly	Garcia	Longoria	Semos
Atwell	Golman	Lovell	Shannon
Atwood	Grant	McAlister	Sherman
Baker	Hale	McKissack	Short
Bass, B.	Hanna, Joe	Moncrief	Silber
Bass, T.	Hannah, John	Moore, A.	Slack
Beckham	Harris	Moore, G.	Slider
Blanton	Hawkins	Murray	Solomon
Braun	Hawn	Nabers	Spurlock
Burgess	Haynes	Nelms	Stewart
Bynum	Heatly	Newton	Swanson
Caldwell	Hendricks	Nichols	Tarbox
Carrillo	Hilliard	Niland	Traeger
Cates	Holmes, T.	Nugent, J.	Tupper
Cavness	Holmes, Z.	Orr	Uher
Clayton	Howard	Parker, W.	Von Dohlen
Cobb	Hubenak	Patterson	Ward
Cole	Hull	Pickens	Wayne
Cruz	Ingram	Poerner	Wieting
Daniel	Johnson	Poff	Williams
Davis, H.	Jones, D.	Presnal	Williamson
Denton	Jungmichel	Price	Wolff
Doyle	Kaster	Reed	Wyatt
Dramberger	Kilpatrick	Rosson	
Farenthold	Kost	Salem	
Finnell	Kubiak	Salter	

Nays—30

Agnich	Clark	Jones, G.	Parker, C.
Allred	Craddick	Lee	Rodriguez
Bigham	Doran	Lewis	Simmons
Blythe	Earthman	Mengden	Smith
Bowers	Finck	Moore, T.	Trusan
Braecklein	Floyd	Moreno	Vale
Calhoun	Head	Neugent, D.	
Christian	Jones, E.	Ogg	

Absent

Harding

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 7 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—93

Adams	Golman	Ligarde	Shannon
Allen, John	Grant	Longoria	Short
Atwell	Hale	Lovell	Silber
Atwood	Hanna, Joe	McAlister	Slack
Baker	Harding	McKissack	Slider
Bass, T.	Hawkins	Moncrief	Solomon
Beckham	Hawn	Moore, A.	Spurlock
Bjanton	Heatly	Moore, G.	Stewart
Braecklein	Hendricks	Murray	Swanson
Burgess	Hilliard	Nabers	Tarbox
Bynum	Holmes, T.	Newton	Traeger
Carrillo	Holmes, Z.	Niland	Truan
Cates	Howard	Nugent, J.	Tupper
Cavness	Hubenak	Orr	Uher
Clark	Hull	Parker, W.	Von Dohlen
Clayton	Ingram	Poerner	Ward
Cobb	Johnson	Poff	Wieting
Cole	Jones, D.	Presnal	Williams
Cruz	Jones, G.	Price	Williamson
Davis, H.	Jungmichel	Salem	Wolff
Doyle	Kilpatrick	Sanchez	Wyatt
Finnell	Kost	Santiesteban	
Foreman	Lemmon	Schulle	
Garcia	Lewis	Semos	

Nays—51

Agnich	Daniel	Head	Parker, C.
Allen, Joe	Denton	Jones, E.	Patterson
Allred	Doran	Kaster	Pickens
Angly	Dramberger	Kubiak	Reed
Bass, B.	Earthman	Lee	Rodriguez
Bigham	Farenthold	Lombardino	Rosson
Blythe	Finck	Mengden	Salter
Bowers	Finney	Moore, T.	Sherman
Braun	Floyd	Moreno	Simmons
Caldwell	Gammage	Nelms	Smith
Calhoun	Hannah, John	Neugent, D.	Vale
Christian	Harris	Nichols	Wayne
Craddick	Haynes	Ogg	

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Article 8 to Committee Amendment No. 1 was adopted by the following vote:

Yeas—73

Adams	Agnich	Allen, Joe	Allred
-------	--------	------------	--------

Angly	Farenthold	Lombardino	Semos
Bass, B.	Finck	Moore, G.	Silber
Bass, T.	Finnell	Moore, T.	Simmons
Beckham	Floyd	Moreno	Smith
Bigham	Gammage	Nabers	Stewart
Bowers	Hannah, John	Nelms	Traeger
Braun	Harris	Newton	Truan
Bynum	Hawkins	Nichols	Tupper
Caldwell	Haynes	Niland	Vale
Carrillo	Head	Parker, C.	Von Dohlen
Cates	Hendricks	Patterson	Wieting
Christian	Holmes, Z.	Price	Williams
Clark	Ingram	Reed	Williamson
Cole	Johnson	Rodriguez	Wolff
Cruz	Kaster	Salem	Wyatt
Daniel	Kilpatrick	Salter	
Denton	Kost	Santiesteban	
Dramberger	Ligarde	Schulle	

Nays—70

Allen, John	Foreman	Lee	Poff
Atwell	Garcia	Lemmon	Presnal
Atwood	Golman	Lewis	Rosson
Baker	Grant	Longoria	Sanchez
Blanton	Hale	Lovell	Shannon
Blythe	Hanna, Joe	McAlister	Sherman
Braecklein	Harding	McKissack	Short
Burgess	Hawn	Mengden	Slack
Calhoun	Heatly	Moncrief	Slider
Cavness	Hilliard	Moore, A.	Solomon
Clayton	Holmes, T.	Murray	Spurlock
Cobb	Howard	Neugent, D.	Swanson
Craddick	Hubenak	Nugent, J.	Tarbox
Davis, H.	Hull	Ogg	Uher
Doran	Jones, D.	Orr	Ward
Doyle	Jones, G.	Parker, W.	Wayne
Earthman	Jungmichel	Pickens	
Finney	Kubiak	Poerner	

Present—Not Voting

Jones, E.

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Committee Amendment No. 1, as amended, was adopted by the following vote:

Yeas—85

Allen, John	Baker	Burgess	Carrillo
Atwell	Blanton	Bynum	Cates
Atwood	Braecklein	Calhoun	Cavness

Clayton	Hubenak	Murray	Slack
Cobb	Hull	Nabers	Slider
Cole	Ingram	Newton	Solomon
Davis, H.	Johnson	Niland	Spurlock
Doran	Jones, D.	Nugent, J.	Swanson
Doyle	Jones, G.	Orr	Tarbox
Finnell	Jungmichel	Parker, W.	Traeger
Foreman	Kaster	Pickens	Tupper
Garcia	Kilpatrick	Poerner	Uher
Golman	Kost	Presnal	Von Dohlen
Grant	Ligarde	Rosson	Ward
Hanna, Joe	Lombardino	Salter	Wayne
Harding	Longoria	Sanchez	Wieting
Hawkins	Lovell	Schulle	Williamson
Hawn	McAlister	Semos	Wolff
Heatly	McKissack	Shannon	Wyatt
Hilliard	Moncrief	Sherman	
Holmes, T.	Moore, A.	Short	
Howard	Moore, G.	Silber	

Nays—59

Adams	Craddick	Head	Parker, C.
Agnich	Cruz	Hendricks	Patterson
Allen, Joe	Daniel	Holmes, Z.	Poff
Allred	Denton	Jones, E.	Price
Angly	Dramberger	Kubiak	Reed
Bass, B.	Earthman	Lee	Rodriguez
Bass, T.	Farenthold	Lemmon	Salem
Beckham	Finck	Lewis	Santiesteban
Bigham	Finney	Mengden	Simmons
Blythe	Floyd	Moore, T.	Smith
Bowers	Gammage	Moreno	Stewart
Braun	Hale	Nelms	Truan
Caldwell	Hannah, John	Neugent, D.	Vale
Christian	Harris	Nichols	Williams
Clark	Haynes	Ogg	

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

HB 730, as amended, was passed to engrossment by the following vote:

Yeas—85

Allen, John	Cates	Golman	Howard
Atwell	Cavness	Grant	Hubenak
Atwood	Clayton	Hale	Hull
Baker	Cobb	Hanna, Joe	Ingram
Blanton	Davis, H.	Harding	Johnson
Braecklein	Doran	Hawkins	Jones, D.
Burgess	Doyle	Hawn	Jones, G.
Bynum	Finnell	Heatly	Jungmichel
Calhoun	Foreman	Hilliard	Kaster
Carrillo	Garcia	Holmes, T.	Kost

Ligarde	Niland	Semos	Tupper
Lombardino	Nugent, J.	Shannon	Uher
Longoria	Orr	Short	Von Dohlen
Lovell	Parker, W.	Silber	Ward
McAlister	Pickens	Slack	Wayne
McKissack	Poerner	Slider	Wieting
Moncrief	Presnal	Solomon	Williamson
Moore, A.	Rosson	Spurlock	Wolff
Moore, G.	Salem	Swanson	Wyatt
Murray	Salter	Tarbox	
Nabers	Sanchez	Traeger	
Newton	Schulle	Truan	

Nays—59

Adams	Cole	Head	Ogg
Agnich	Craddick	Hendricks	Parker, C.
Allen, Joe	Cruz	Holmes, Z.	Patterson
Allred	Daniel	Jones, E.	Poff
Angly	Denton	Kilpatrick	Price
Bass, B.	Dramberger	Kubiak	Reed
Bass, T.	Earthman	Lee	Rodriguez
Beckham	Farenthold	Lemmon	Santiesteban
Bigham	Finck	Lewis	Sherman
Blythe	Finney	Mengden	Simmons
Bowers	Floyd	Moore, T.	Smith
Braun	Gammage	Moreno	Stewart
Caldwell	Hannah, John	Nelms	Vale
Christian	Harris	Neugent, D.	Williams
Clark	Haynes	Nichols	

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Mr. Atwell moved to reconsider the vote by which HB 730 was passed to engrossment and to table the motion to reconsider.

The motion to table prevailed.

REASON FOR VOTE ON HB 730

The biennial practice of increasing spending beyond the revenue available from the existing tax structure and also in excess of that required to meet the increased demands resulting from population growth and inflation must come to an end some session, and now is a good time to start.

This excess in spending in previous years has caused the enactment of additional tax levies by the Legislature each biennium, for more than a decade, despite the fact that the broadbased tax structure in effect provides for each succeeding biennium substantially in excess of \$100 million more than in the previous such period.

The present tax structure is expected to provide in the fiscal 1971-1973 biennium approximately \$300 million more than it is now providing for

the current biennium, yet this bill confirms that the policies of the past ten years remain in force.

Accelerating government intervention in the private concerns of the people, the beginning of deficit spending on an enormous scale, persistent refusal on the part of our leaders to face up to economic realities, blind pride in the topsy-turvy system of electioneering welfarists, and unquestioning faith in the ability of government to solve people's problems by taking money from them has us in serious trouble and we are getting in deeper.

These policies can only lead to an increasing rapidity in accelerating state spending and the resultant enactment of new and increased taxes which creates instability, uncertainty and apprehension among the people, thereby undermining confidence in the stewardship of the State of Texas—the essential factor in the state's rapid economic growth in the past thirty years. Stability and confidence of leadership is essential to economic growth, job opportunity and the good life the people of Texas have become accustomed to enjoy.

The Governor's reliance on more of the same—tax and spend, spend and tax, cannot but aggravate that distrust the people have for government.

The taxpayers of this state are bent and almost broken from increasing property taxes, sales taxes, gas taxes, excise taxes, special assessment taxes, state taxes, county taxes, federal taxes, school taxes, municipal taxes, not to speak of taxes on taxes (surcharges) and hidden taxes.

This bill should be defeated.

It is time for us to be courageous, and seek avenues of economy rather than of increased spending, thereby stretching the revenue from the existing tax structure and avoiding the enactment of any new or increased taxes.

Signed: Walter Mengden

SB 65 ON SECOND READING
(Mr. Cavness—House Sponsor)

The Speaker laid before the House on its second reading and passage to third reading,

SB 65, A bill to be entitled An Act relating to the Firemen's Relief and Retirement Fund in certain cities; amending Section 6C, Subsections (a) and (c) of Section 7D, Subsection (a) of Section 10D, Subsections (a) and (g) of Section 12B, and adding Subsection (j) to Section 12B, Chapter 125, Acts of the 45th Legislature, Regular Session, 1937, as amended (Article 6243e, Vernon's Texas Civil Statutes); and declaring an emergency.

The bill was read second time and was passed to third reading by the following vote:

Yeas—142

Adams	Allen, John	Atwell	Bass, B.
Agnich	Allred	Atwood	Bass, T.
Allen, Joe	Angly	Baker	Beckham

Bigham	Gammage	Ligarde	Salem
Blanton	Garcia	Lombardino	Salter
Blythe	Golman	Longoria	Sanchez
Bowers	Grant	Lovell	Santiesteban
Braecklein	Hale	McAlister	Schulle
Braun	Hanna, Joe	McKissack	Semos
Burgess	Hannah, John	Mengden	Shannon
Bynum	Harding	Moncrief	Sherman
Caldwell	Harris	Moore, A.	Short
Calhoun	Hawkins	Moore, G.	Silber
Carrillo	Hawn	Moore, T.	Simmons
Cates	Haynes	Moreno	Slack
Cavness	Head	Murray	Slider
Christian	Heatly	Nabers	Smith
Clark	Hendricks	Nelms	Solomon
Clayton	Hilliard	Neugent, D.	Spurlock
Cobb	Holmes, T.	Newton	Stewart
Cole	Holmes, Z.	Nichols	Swanson
Craddick	Howard	Niland	Tarbox
Cruz	Hubenak	Nugent, J.	Traeger
Daniel	Hull	Ogg	Truan
Davis, H.	Ingram	Orr	Tupper
Denton	Jones, D.	Parker, C.	Vale
Doran	Jones, E.	Parker, W.	Von Dohlen
Doyle	Jones, G.	Patterson	Ward
Dramberger	Jungmichel	Pickens	Wayne
Earthman	Kaster	Poerner	Wieting
Farenthold	Kilpatrick	Poff	Williams
Finck	Kost	Presnal	Williamson
Finnell	Kubiak	Price	Wolff
Finney	Lee	Reed	Wyatt
Floyd	Lemmon	Rodriguez	
Foreman	Lewis	Rosson	

Present—Not Voting

Uher

Absent

Johnson

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

SB 65 ON THIRD READING

Mr. Cavness moved that the constitutional rule requiring bills to be read on three several days be suspended and that SB 65 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—110

Allen, John	Farenthold	Lee	Salem
Allred	Finnell	Lemmon	Salter
Angly	Foreman	Lewis	Sanchez
Atwell	Garcia	Lombardino	Santiesteban
Baker	Golman	Longoria	Schulle
Beckham	Grant	Lovell	Semos
Bigham	Hale	McAlister	Shannon
Blanton	Hannah, John	McKissack	Short
Blythe	Harding	Moncrief	Silber
Braecklein	Harris	Moore, A.	Slack
Braun	Hawkins	Moore, G.	Slider
Bynum	Hawn	Moore, T.	Smith
Caldwell	Haynes	Murray	Solomon
Calhoun	Head	Nelms	Spurlock
Carrillo	Heatly	Neugent, D.	Stewart
Cates	Hendricks	Newton	Tarbox
Cayness	Hilliard	Nichols	Traeger
Christian	Holmes, T.	Niland	Truan
Clark	Howard	Ogg	Tupper
Clayton	Hubenak	Orr	Vale
Cobb	Hull	Parker, C.	Von Dohlen
Cole	Ingram	Parker, W.	Ward
Craddick	Jones, D.	Patterson	Wayne
Cruz	Jones, E.	Poff	Wieting
Daniel	Jungmichel	Presnal	Williams
Davis, H.	Kilpatrick	Price	Williamson
Doyle	Kost	Rodriguez	
Dramberger	Kubiak	Rosson	

Nays—26

Adams	Doran	Kaster	Reed
Agnich	Earthman	Mengden	Sherman
Atwood	Finck	Moreno	Simmons
Bass, B.	Floyd	Nabers	Wolff
Bass, T.	Gammage	Nugent, J.	Wyatt
Bowers	Hanna, Joe	Pickens	
Denton	Jones, G.	Poerner	

Present—Not Voting

Uher

Absent

Allen, Joe	Finney	Johnson	Swanson
Burgess	Holmes, Z.	Ligarde	

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

The Speaker then laid SB 65 before the House on third reading and final passage.

The bill was read third time and was passed by the following vote:

Yeas—141

Adams	Doyle	Kilpatrick	Reed
Agnich	Dramberger	Kost	Rodriguez
Allen, Joe	Earthman	Kubiak	Rosson
Allen, John	Farenthold	Lee	Salem
Allred	Finck	Lemmon	Salter
Angly	Finnell	Lewis	Sanchez
Atwell	Finney	Ligarde	Santiesteban
Atwood	Floyd	Lombardino	Schulle
Baker	Foreman	Longoria	Semos
Bass, B.	Gammage	Lovell	Shannon
Bass, T.	Garcia	McAlister	Sherman
Beckham	Golman	McKissack	Short
Bigham	Grant	Mengden	Silber
Blanton	Hale	Moncrief	Simmons
Blythe	Hanna, Joe	Moore, A.	Slack
Bowers	Hannah, John	Moore, G.	Slider
Braecklein	Harding	Moore, T.	Smith
Braun	Harris	Moreno	Solomon
Burgess	Hawkins	Murray	Spurlock
Bynum	Hawn	Nabers	Stewart
Caldwell	Haynes	Nelms	Swanson
Calhoun	Head	Neugent, D.	Tarbox
Carrillo	Heatly	Newton	Traeger
Cates	Hendricks	Nichols	Truan
Cavness	Hilliard	Niland	Tupper
Christian	Holmes, T.	Nugent, J.	Vale
Clark	Holmes, Z.	Ogg	Ward
Clayton	Howard	Orr	Wayne
Cobb	Hubenak	Parker, C.	Wieting
Cole	Hull	Parker, W.	Williams
Craddick	Ingram	Patterson	Williamson
Cruz	Jones, D.	Pickens	Wolff
Daniel	Jones, E.	Poerner	Wyatt
Davis, H.	Jones, G.	Poff	
Denton	Jungmichel	Presnal	
Doran	Kaster	Price	

Present—Not Voting

Uher

Absent

Johnson Von Dohlen

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Mr. Cavness moved to reconsider the vote by which SB 65 was passed and to table the motion to reconsider.

The motion to table prevailed.

SB 341 ON SECOND READING
(Mr. Harris—House Sponsor)

The Speaker laid before the House on its second reading and passage to third reading,

SB 341, A bill to be entitled An Act validating elections and other proceedings relating to the authorization, execution, and delivery of water supply contracts pursuant to the provisions of Chapter 342, Acts of the 51st Legislature, 1949 (Article 1109e, Vernon's Texas Civil Statutes), under certain conditions; providing for the execution, delivery and validity of such contracts, limiting the application of the Act; and declaring an emergency.

The bill was read second time.

Mr. Hubenak offered the following committee amendment to the bill:

Committee Amendment No. 1

Amend SB 341 by striking all below the enacting clause and inserting in lieu thereof the following:

Section 1. Where any city or town within this state has heretofore submitted to the qualified resident electors of such city or town who own taxable property within such city or town and who had duly rendered the same for taxation a proposition or propositions to authorize the governing body of such city or town to enter into a contract with any district or authority created under Article XVI, Section 59 of the Texas Constitution for the purpose of supplying water to such city or town, pursuant to the provisions of Chapter 342, Acts of the 51st Legislature, 1949, and such water supply contract was approved by a majority vote of the said property tax-paying voters voting at such election, all such election proceedings, the results thereof, and proceedings of the governing body and officials of such city or town relating to such contracts and the authorization, execution, and delivery thereof are hereby validated, ratified, and confirmed, and any such contract heretofore entered into by any such city or town pursuant to such election is hereby validated, ratified, and confirmed, notwithstanding the fact that only qualified electors of such city or town who owned taxable property therein and who had duly rendered the same for taxation participated in such election.

Section 2. The provisions hereof shall not be construed as validating any contract where (i) such contract was required by law to be approved at an election, unless such contract was approved by a majority of the participating resident qualified electors owning taxable property within such city or town who had duly rendered same for taxation and the statutory election contest period has expired prior to the effective date of this Act, or (ii) such contract or election proceedings are involved in litigation questioning the validity thereof on the effective date of this Act.

Section 3. The fact that recent decisions of the United States Supreme Court have cast doubt on the validity of elections held prior to such deci-

sions at which only property taxpaying electors participated, the fact that Texas law requires approval of certain contracts by such restricted classification of voters, and the further fact that proceedings and elections relating to such contracts, when such proceedings and elections have been in accordance with the requirements of Texas law, should be validated and cities and towns should be authorized to enter into such contracts, constitute and create an emergency and an imperative public necessity that the Constitutional Rule requiring bills to be read on three several days in each House be suspended, and the same is hereby suspended, and this Act shall take effect and be in force from and after its passage, and it is so enacted.

The committee amendment was adopted.

SB 341, as amended, was passed to third reading.

SB 341 ON THIRD READING

Mr. Harris moved that the constitutional rule requiring bills to be read on three several days be suspended and that SB 341 be placed on its third reading and final passage.

The motion prevailed by the following vote:

Yeas—119

Allen, Joe	Denton	Kilpatrick	Price
Allen, John	Doyle	Kost	Reed
Allred	Dramberger	Kubiak	Rodriguez
Angly	Farenthold	Lemmon	Salem
Atwell	Finnell	Lewis	Salter
Atwood	Foreman	Ligarde	Sanchez
Baker	Gammage	Lombardino	Santiesteban
Bass, B.	Garcia	Longoria	Schulle
Bass, T.	Golman	Lovell	Semos
Beckham	Grant	McAlister	Shannon
Bigham	Hale	McKissack	Short
Blanton	Hanna, Joe	Moncrief	Silber
Braecklein	Hannah, John	Moore, A.	Slack
Braun	Harding	Moore, G.	Smith
Burgess	Harris	Moore, T.	Solomon
Bynum	Hawkins	Murray	Stewart
Caldwell	Hawn	Nabers	Swanson
Calhoun	Haynes	Neims	Tarbox
Carrillo	Head	Neugent, D.	Traeger
Cates	Heatly	Newton	Truan
Cavness	Hendricks	Nichols	Tupper
Christian	Hilliard	Niland	Uher
Clark	Holmes, T.	Ogg	Von Dohlen
Clayton	Holmes, Z.	Orr	Ward
Cobb	Howard	Parker, C.	Wayne
Cole	Hubenak	Parker, W.	Wieting
Craddick	Hull	Patterson	Williams
Cruz	Ingram	Poerner	Williamson
Daniel	Johnson	Poff	Wyatt
Davis, H.	Jungmichel	Presnal	

Nays—21

Adams	Finck	Mengden	Slider
Agnich	Floyd	Nugent, J.	Spurlock
Blythe	Jones, D.	Pickens	Wolff
Bowers	Jones, E.	Rosson	
Doran	Kaster	Sherman	
Earthman	Lee	Simmons	

Absent

Finney	Jones, G.	Moreno	Vale
--------	-----------	--------	------

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

The Speaker then laid SB 341 before the House on third reading and final passage.

The bill was then read third time and was passed by the following vote:

Yeas—142

Adams	Daniel	Hubenak	Nugent, J.
Agnich	Davis, H.	Hull	Ogg
Allen, Joe	Denton	Ingram	Orr
Allen, John	Doran	Johnson	Parker, C.
Allred	Doyle	Jones, D.	Parker, W.
Angly	Dramberger	Jones, E.	Patterson
Atwell	Earthman	Jungmichel	Pickens
Atwood	Farenthold	Kaster	Poerner
Baker	Finck	Kilpatrick	Poff
Bass, B.	Finnell	Kost	Presnal
Bass, T.	Finney	Kubiak	Price
Beckham	Floyd	Lee	Reed
Bigham	Foreman	Lemmon	Rodriguez
Blanton	Gammage	Lewis	Rosson
Blythe	Garcia	Ligarde	Salem
Bowers	Golman	Lombardino	Salter
Braecklein	Grant	Longoria	Sanchez
Braun	Hale	Lovell	Santiesteban
Burgess	Hanna, Joe	McKissack	Schulle
Bynum	Hannah, John	Mengden	Semos
Caldwell	Harding	Moncrief	Shannon
Calhoun	Harris	Moore, A.	Sherman
Carrillo	Hawkins	Moore, G.	Short
Cates	Hawn	Moore, T.	Silber
Cavness	Haynes	Moreno	Simmons
Christian	Head	Murray	Slack
Clark	Heatly	Nabers	Slider
Clayton	Hendricks	Nelms	Smith
Cobb	Hilliard	Neugent, D.	Solomon
Cole	Holmes, T.	Newton	Spurlock
Craddick	Holmes, Z.	Nichols	Stewart
Cruz	Howard	Niland	Swanson

Tarbox	Uher	Wayne	Wolff
Traeger	Vale	Wieting	Wyatt
Truan	Von Dohlen	Williams	
Tupper	Ward	Williamson	

Absent

Jones, G.	McAlister
-----------	-----------

Absent-Excused

Boyle	Davis, D.	Graves	Stroud
Coats			

Mr. Harris moved to reconsider the vote by which SB 341 was passed and to table the motion to reconsider.

The motion to table prevailed.

On motion of Mr. Harris the caption of SB 341 was ordered amended to conform to the body of the bill.

COAUTHORS OF HB 860

Mr. Grant and Mr. Lewis were granted permission by the author of HB 860 to sign the bill as coauthors.

ADJOURNMENT

Mr. Sherman moved that the House adjourn until 10:30 a.m. tomorrow.

The motion prevailed without objection.

The House accordingly, at 5:39 p.m., adjourned until 10:30 a.m. tomorrow.

APPENDIX

BILLS TRANSMITTED TO GOVERNOR
UNDER ARTICLE 16, SECTION 59

HB 881 transmitted by the Chief Clerk to the Governor on March 3, 1971.

HB 889 transmitted by the Chief Clerk to the Governor on March 3, 1971.

STANDING COMMITTEE REPORTS

Favorable reports have been filed by Committees on bills and resolutions, as follows:

Conservation and Reclamation: HB 555.

Counties: HB 356.

Engrossed and Enrolled Bills: Correctly engrossed—HB 104, HB 235, HB 253, HB 343, HB 600, HCR 62.

Insurance: HB 329.

Judiciary: HB 113.

Penitentiaries: SB 188.

Public Education: HB 328, HB 351.

State Affairs: HB 203, HB 266.

SENT TO THE GOVERNOR
MARCH 3, 1971

HB 499.

THIRTY-SECOND DAY—THURSDAY, MARCH 4, 1971

The House met at 10:30 a.m. and was called to order by the Speaker.

The roll of the House was called and the following Members were present:

Mr. Speaker	Davis, H.	Jungmichel	Reed
Adams	Denton	Kaster	Rodriguez
Agnich	Doran	Kilpatrick	Rosson
Allen, Joe	Doyle	Kost	Salem
Allen, John	Dramberger	Kubiak	Salter
Allred	Earthman	Lee	Sanchez
Angly	Farenthold	Lemmon	Santiesteban
Atwell	Finck	Lewis	Schulle
Baker	Finnell	Ligarde	Semos
Bass, B.	Finney	Lombardino	Shannon
Bass, T.	Floyd	Longoria	Sherman
Beckham	Foreman	Lovell	Short
Bigham	Gammage	McAlister	Silber
Blanton	Garcia	McKissack	Simmons
Blythe	Golman	Mengden	Slack
Bowers	Grant	Moncrief	Slider
Boyle	Hale	Moore, A.	Smith
Braecklein	Hanna, Joe	Moore, G.	Solomon
Braun	Hannah, John	Moore, T.	Spurlock
Burgess	Harding	Moreno	Stewart
Bynum	Harris	Murray	Stroud
Caldwell	Hawkins	Nabers	Swanson
Calhoun	Hawn	Nelms	Tarbox
Carrillo	Haynes	Newton	Traeger
Cates	Head	Nichols	Tupper
Cavness	Heatly	Niland	Uher
Christian	Hendricks	Nugent, J.	Vale
Clark	Hilliard	Orr	Von Dohlen
Clayton	Holmes, T.	Parker, C.	Ward
Coats	Holmes, Z.	Parker, W.	Wayne
Cobb	Howard	Patterson	Wieting
Cole	Hubenak	Pickens	Williams
Craddick	Hull	Poerner	Williamson
Cruz	Jones, D.	Poff	Wolff
Daniel	Jones, E.	Presnal	Wyatt
Davis, D.	Jones, G.	Price	